

EXHIBIT M

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

OTO ANALYTICS, LLC,

Plaintiff,

v.

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

Defendants.

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Civil Action No.

COMPLAINT

Plaintiff Oto Analytics, LLC (f/k/a Oto Analytics, Inc., d/b/a Womply) (“**Womply**”), by and through its undersigned counsel, files this Complaint against Defendants Benworth Capital Partners PR LLC, a Puerto Rico limited liability company (“**Benworth PR**”), Benworth Capital Partners LLC, a Florida limited liability company (“**Benworth FL**”), Bernardo Navarro (“**Mr. Navarro**”), and Claudia Navarro (“**Ms. Navarro**,” together with Mr. Navarro, the “**Navarros**,” and collectively with Benworth FL and Benworth PR, “**Defendants**”) and alleges as follows:

INTRODUCTION

1. This case arises out of Defendants’ fraudulent scheme to prevent Plaintiff Womply from collecting nearly \$200 million in fees and interest that Benworth FL owes Womply for services rendered.

2. Womply is a technology company that provided Benworth FL, a Florida lender owned by Defendant Bernardo Navarro, with valuable technology services that allowed Benworth FL to efficiently process, manage, and track the large volume of loans it made through the federal

Paycheck Protection Program (the “**PPP**”). With Womply’s technology, Benworth FL processed and funded more than **305,000 PPP loans** with a principal amount of approximately **\$4 billion**, generating more than **\$680 million** in revenue for Benworth FL. Pursuant to agreements between Benworth FL and Womply, Benworth FL owes Womply approximately \$153 million in fees plus more than \$44 million in interest that continues to accrue. In August 2021, Womply commenced a JAMS arbitration against Benworth FL to recover those fees (the “**Arbitration**”). Through discovery in that case, Womply has learned that Mr. Navarro and his wife, Claudia Navarro, have taken extraordinary measures to prevent Womply from collecting its debt, including: (i) [REDACTED]

[REDACTED]

(the “**Fraudulent Transfer**”); (ii) representing to Womply and the arbitrator that Benworth FL was holding Womply’s fees “in trust,” which the arbitrator has determined was [REDACTED] [REDACTED] (iii) [REDACTED]; and (iv) misrepresenting the nature of Womply’s services in a Congressional investigation into the PPP. With permission from the arbitrator, Womply brings this case to unwind the Fraudulent Transfer and for other equitable relief.

3. During the height of the COVID-19 pandemic, Congress directed the United States Small Business Administration (the “**SBA**”) to implement the PPP, which provided for banks and other lenders to make federally guaranteed and (if statutory conditions are met) forgivable loans to businesses that sought to continue to cover payroll and other basic expenses. The program required connecting millions of potential borrowers with thousands of lenders, and those lenders were required to review applicant information for compliance with the PPP’s criteria. If a lender decided to fund a loan and the loan was approved by the SBA, the lender also had to track and

service the loan in accordance with still further program requirements. All told, more than 10 million PPP loans were obtained from approximately 5,500 national and local lenders.

4. 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, process the applications, 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.

5. Womply sought to assist the lenders in solving some of these 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 for free; and (ii) Womply provided lenders with a technology platform allowing them to manage the enormous logistical difficulties inherent in reviewing, processing, 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.

6. One of the lenders that used Womply's services was Benworth FL. Before the PPP, Benworth FL focused on making mortgage loans with high interest rates to individuals who may have trouble getting loans from traditional banks. During the first round of the PPP in 2020, Benworth FL sought and obtained authorization from the SBA to make PPP loans and, using a largely manual process, Benworth FL processed and funded only approximately 700 PPP loans that year.

7. In February 2021, during the second round of the PPP, Benworth FL contracted to use Womply's referral and technology services. Womply's technology services automated many of Benworth FL's loan processing functions, which made Benworth's processing and management of loan applications much more efficient. For participating in the PPP, Benworth FL received interest on the loans, a federal government guarantee, and "processing fees" from the federal government that were generous relative to the size of the loans. Under its agreements with Womply, Benworth FL agreed to pay Womply certain fees for each of the loans Benworth FL processed and managed using Womply's technology platform.

8. In early July 2021, after the PPP ended, Benworth FL disclosed that it was withholding approximately \$43 million in fees due to Womply for 40,563 PPP loans that Benworth FL processed using technology provided by Womply, and it demanded that Womply cut its fees in half for those loans. Womply did not agree to Benworth FL's attempt to retrade their agreements. At the same time, Womply discovered that Benworth FL had failed to pay it more than \$110 million in fees for other PPP loans Benworth FL processed using Womply's technology services. In July 2021, Womply demanded that Benworth FL pay Womply its outstanding fees; Benworth FL refused, and Womply terminated its agreements with Benworth FL.

9. Unbeknownst to Womply, at around the same time Womply was demanding payment of its fees, Defendants were busy orchestrating the Fraudulent Transfer, [REDACTED]

10. In the summer of 2021, the Navarros formed Benworth PR, which they wholly own, and caused Benworth FL to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. The separation of Benworth FL and Benworth PR as distinct corporate entities is an illusion—they are effectively the same company. Benworth PR is described on the Benworth FL website as Benworth FL’s “office in San Juan, Puerto Rico.” In addition, [REDACTED]

[REDACTED]

[REDACTED] In order to make it appear as if Benworth FL and Benworth PR are separate companies, the Navarros

[REDACTED]

[REDACTED]

[REDACTED]

12. Benworth FL also took steps to prevent Womply from discovering the Fraudulent Transfer. In October 2021, months after the Fraudulent Transfer, Benworth FL filed an Answer in the Arbitration that asserted it “has held the disputed fees in trust until its dispute with Womply, including the matter of fraudulent loans, is resolved.” [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

13. This is not the first time Mr. Navarro has been accused of diverting assets [REDACTED]

[REDACTED]. As discussed below (*see infra* ¶¶ 205-209), in *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.), filed April 2, 2012, a default judgment was entered against Mr. Navarro, but Mr. Navarro claimed he could not satisfy the judgment. The court in that case allowed the

judgment creditor to take the deposition of Ms. Navarro to determine whether Mr. Navarro's assets, including his interest in Benworth FL, were "being diverted to [his] wife."

14. After learning of the Fraudulent Transfer through discovery in the Arbitration, Womply made a motion seeking the arbitrator's permission to disclose information obtained in that case (which was covered by a protective order) to a court of competent jurisdiction in order to obtain equitable and/or injunctive relief in connection with the Fraudulent Transfer. After reviewing the information concerning the Fraudulent Transfer that Womply obtained in discovery, the arbitrator found that [REDACTED]

[REDACTED] The Arbitrator went on to find that [REDACTED] [REDACTED]" and that [REDACTED] [REDACTED] [REDACTED]"

15. The Arbitrator granted Womply's motion, finding that an "[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16. Defendants' efforts to prevent Womply from collecting its debt did not stop at the Fraudulent Transfer.

17. Mr. Navarro also sought to use his government contacts to undermine the Arbitration. In August 2021, Mr. Navarro sent a letter to the SBA asking it to issue new rules that Benworth FL hoped to use to retroactively limit Womply's fees. Mr. Navarro—who served as the

[REDACTED]

[REDACTED]—also mislead [REDACTED] regarding the SBA’s rules. [REDACTED] sent a letter to the SBA, stating that he heard from Florida lenders that “ambiguity” in the SBA rules concerning agent fees “has created confusion and costly uncertainty between lenders and loan agents,” and he asked the SBA to provide “clarification in writing, or,” as Benworth FL had requested of the SBA, “through new rulemaking.” Despite Mr. Navarro’s lobbying efforts, the SBA left its rules, which do not cap Womply’s fees, unchanged.

18. Benworth FL also made material misrepresentations to the House Select Subcommittee on the Coronavirus Crisis (the “**Subcommittee**”) in connection with its investigation into the PPP in order to advance its position in the Arbitration. Under the PPP, Benworth FL was responsible for conducting a good faith review of PPP loan applicant information and for making all lending decisions, and Benworth FL retained those responsibilities under its agreements with Womply. Womply provided Benworth FL with loan applicant referral services and technology services that made processing loan applications more efficient, but Womply did not determine applicant eligibility for a PPP loan or otherwise make any lending decisions. Indeed, the agreements between Benworth FL and Womply make clear that Womply is not responsible for the accuracy, lawfulness, or completeness of an application, and that Womply did not endorse any application. And it was Benworth FL that decided which Womply-referred PPP loans to submit to the SBA for approval and, if approved, to fund. Despite this, Benworth FL told the Subcommittee that it relied on Womply to determine applicant eligibility. The purpose of this misrepresentation was twofold. First, Benworth FL sought to avoid accountability for its failure to conduct a good faith review of applicant information before deciding to fund PPP loans.

Second, Benworth FL sought to manipulate the findings of the Subcommittee's investigation to aid it in the Arbitration. Based on Benworth FL's misrepresentations about Womply's role, the staff of the Subcommittee issued a report (the "**Staff Report**") incorrectly concluding that Womply performed the services of a Lender Service Provider as that term is defined under SBA regulations. Benworth FL then used that conclusion to argue in the Arbitration that, because Womply should be considered a Lender Service Provider (it is not), Womply's fees are capped by SBA regulations (they are not).

19. At bottom, Benworth FL owes Womply approximately \$153 million in fees for services rendered and more than \$44 million in contractual interest. Benworth FL's principal defense in the Arbitration is that Womply's fees for its technology services are capped by an SBA rule that governs fees for application preparation and referral services, but that argument has already been rejected by a federal court. Benworth FL's other defenses and counterclaims in the Arbitration are similarly legally and factually deficient, and Womply likely will obtain an award for substantial damages following the Arbitration hearing, which is scheduled for March 20, 2023.

20. Womply now brings this action for an order rescinding the Fraudulent Transfer and for other equitable relief so that Womply can recover the fees and interest it earned under its contracts with Benworth FL.

PARTIES

21. Plaintiff Womply is a limited liability company organized under the laws of Delaware with no physical presence. To the extent Womply has a principal place of business, it is in Nevada, where its CEO resides. Womply is the successor in interest to Oto Analytics, Inc. d/b/a Womply.

22. Defendant Benworth PR is a limited liability company organized under the laws of Puerto Rico with its principal place of business in San Juan, Puerto Rico. [REDACTED]

23. Defendant Benworth FL is a limited liability company organized under the laws of Florida with its principal place of business in Coral Gables, Florida. Benworth FL's sole member and equity holder is Mr. Navarro.

24. Defendant Bernardo Navarro is an individual who is a resident of Puerto Rico. Mr. Navarro is the sole member, founder, president, and CEO of Benworth FL. [REDACTED]

[REDACTED] Mr. Navarro is [REDACTED] and is listed as an authorized person for Benworth PR on the Puerto Rico Registry of Corporations and Entities. Mr. Navarro is married to Ms. Navarro.

25. Defendant Claudia Navarro is an individual who, on information and belief, is a resident of Puerto Rico. [REDACTED]

[REDACTED] Ms. Navarro also is [REDACTED]. Ms. Navarro is married to Mr. Navarro. Ms. Navarro is listed as an authorized person for Benworth PR on the Puerto Rico Registry of Corporations and Entities.

JURISDICTION AND VENUE

26. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) because this is a civil action between a Plaintiff that is a citizen of Delaware and Defendants that are citizens of Florida and Puerto Rico. None of Defendants have the same citizenship as Plaintiff. The amount in controversy exceeds \$75,000, exclusive of interests and costs.

27. This Court has subject-matter jurisdiction over Womply's claim against Benworth FL because, although portions of the ongoing dispute between Womply and Benworth FL are subject to an agreement to arbitrate, such agreement does not include claims for injunctive or other equitable relief, which Womply is seeking here. The agreement to arbitrate specifically provides:

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.

(emphasis added.)

28. This Court also has subject-matter jurisdiction over Womply's claim against Benworth FL because it does not concern the subject matter of the contract in which the arbitration agreement is contained, but instead concerns a fraudulent transfer [REDACTED]

29. In addition, in an order dated January 17, 2023, the Arbitrator in the Arbitration between Benworth FL and Womply held:

Pursuant to the relevant agreements between the parties, either party may seek equitable or injunctive relief concerning issues relevant to this Arbitration in a court of law. These provisions allow Womply to seek equitable or injunctive relief in a court of competent jurisdiction relating to the alleged fraudulent transfer of [REDACTED].

30. This Court has personal jurisdiction over Defendant Benworth PR because Benworth PR is a Puerto Rico limited liability company with its principal place of business located in this District.

31. This Court has personal jurisdiction over Defendant Bernardo Navarro because he is domiciled in this District. This Court further has personal jurisdiction over Mr. Navarro because

he has purposefully conducted activities in Puerto Rico on behalf of Benworth PR and is a [REDACTED] [REDACTED] authorized representative of Benworth PR, the causes of action herein arise from or relate to those purposeful activities with Puerto Rico, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

32. This Court has personal jurisdiction over Defendant Claudia Navarro because, on information and belief, she is domiciled in this District. This Court further has personal jurisdiction over Ms. Navarro because she has purposefully conducted activities in Puerto Rico on behalf of Benworth PR as its [REDACTED] authorized representative [REDACTED], the causes of action herein arise from or relate to those purposeful activities with Puerto Rico, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

33. This Court has personal jurisdiction over Defendant Benworth FL because Benworth FL has purposefully conducted activities in Puerto Rico, the causes of action herein arise from or relate to those purposeful contacts with Puerto Rico, and the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

34. As discussed in more detail below, Defendant Benworth FL has substantial connections to Puerto Rico, including that:

- a. Bernardo Navarro, Benworth FL's sole member, president, CEO, and founder is domiciled in, and therefore a citizen of, Puerto Rico;
- b. During the summer of 2021, [REDACTED] [REDACTED] a limited liability company organized under the laws of, and with its principal place of business in, Puerto Rico;

- c. Benworth FL is party to agreements with Benworth PR for services related to loan forgiveness, loan servicing, monitoring fraud, and responding to subpoenas;
 - d. Benworth FL conducts substantial business in Puerto Rico, evidenced by the contact address listed on the homepage of its website: 221 Avenida Ponce de Leon, Suite 1401, San Juan, PR 00917;¹
 - e. Benworth FL's website identifies Benworth PR as Benworth FL's "office in San Juan, Puerto Rico;"² and
 - f. Bernardo Navarro's public LinkedIn profile states that "Benworth Capital" is a "Florida-headquartered private equity licensed mortgage lender," and that it "also has offices in Puerto Rico."
35. 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.

FACTS

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

36. 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 PPP. 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 could be partially or fully forgiven if a borrower spent the loan

¹ *Benworth*, <https://benworthcapital.com/> (last visited Jan. 22, 2023).

² *About Us*, <https://benworthcapital.com/about/> (last visited Jan. 22, 2023).

money in accordance with the program requirements and were guaranteed by the SBA. 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 of the United States signed the CARES Act into law on March 27, 2020.

37. 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” (“LSP”), to assist with lender functions.

38. SBA regulations define the term “Agent,” to include certain borrower Agents and certain types of lender-side outside vendors, including LSPs. 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).

39. 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).

40. 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).

41. 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). 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.

42. 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

43. 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**”).³ 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 SBA Lender pays fees to an Agent for services in connection with an SBA-guaranteed loan.” *Id.* at 7,630–31.

44. 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.

45. 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.

³ Available at <https://www.govinfo.gov/content/pkg/FR-2020-02-10/pdf/2020-02128.pdf>.

46. In the CARES Act, Congress empowered the SBA to “establish[]” “limits” on fees that Agents could collect for “assist[ing] an eligible recipient”⁴—*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.

47. 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).⁵ 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.

48. 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” (the “**Borrower Agent Fee Cap**”). 85 Fed. Reg. 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. *Id.* The April 2020 PPP Rule explained that this 1%

⁴ 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).

⁵ *Available at* <https://www.govinfo.gov/content/pkg/FR-2020-04-15/pdf/2020-07672.pdf>.

Borrower Agent Fee Cap was “reasonable based upon the application requirements and the fees that lenders receive for making PPP loans.” *Id.*

49. 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. 85 Fed. Reg. at 20,816. 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. (emphasis added).

50. 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.*, No. 2:20-cv-185, 2021 WL 2196636, at *1 (S.D. Tex. Feb. 9, 2021) (collecting cases). Federal district courts around the country uniformly rejected that argument. *Id.* at *4; *see also, e.g., Johnson v. JPMorgan Chase Bank, N.A.*, No. cv-

20-4100, 488 F. Supp. 3d 144, 157 (S.D.N.Y. Sept. 21, 2020); *Am. Video Duplicating, Inc. v. City Nat'l Bank*, No. 2:20-cv-04036, 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.

51. 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).

52. 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.

53. 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.

54. 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. *See* 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”); SBA SOP 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.

55. 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.

56. 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 involve a tremendous amount of paperwork.

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.

57. 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	
<u>Loan Amount</u>	<u>April 2020 PPP Rule</u>	<u>2021 Amendment</u>
\$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

58. 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.*

59. 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,” *id.* 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.

60. 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 <i>who assists a borrower?</i> 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 85 Fed. Reg. at 20,816 (emphasis added).	Who pays the fee to an agent <i>who provides assistance in connection with a PPP loan?</i> 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 86 Fed. Reg. at 3,709 (emphasis added).

61. 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.

62. 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.

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

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

64. 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.

65. 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 created a publicly available website through which small businesses seeking PPP loans could submit some basic contact and business information.

66. 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 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.⁶

67. After Womply directed a small business to a PPP lender partner, that lender was responsible for collecting additional information and supporting documentation from the

⁶ <https://womply.com/ppp> (last visited Jan. 22, 2023).

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.

68. For providing this limited referral service (“Non-Fast Lane”), Womply’s lender partners agreed to pay Womply referral fees pursuant to negotiated agreements. In accordance with the April 2020 PPP Rule, Womply did not charge borrowers any fees. Benworth FL did not participate in Non-Fast Lane.

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

69. 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* ¶ 56), 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.

70. 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 were eligible for.

71. 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.

72. 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.

73. Womply also developed 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 tirelessly to develop 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.

74. 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**").

75. 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 for free; (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.

76. **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.

77. **Second**, the technology services integrated into the Technology Platform performed various services for lenders 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 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. verified government identification provided by applicants using Persona;

- d. performed biometric selfie scans using third-party application Persona to confirm that the applicant submitted a selfie of an actual human and that the face in the selfie matched the face on the government identification;
- e. checked applicant information against various databases to confirm identity using Persona;
- f. checked applicant information against various databases to identify potential red flags—such as individuals subject to OFAC sanctions and politically exposed persons—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 Oculolus; and
- k. scanned bank and tax documents provided by applicants to identify potential fraud using third-party applications Oculolus and Inscribe.⁷

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

⁷ Womply added technology services at different points in time and each technology service did not necessarily apply to all applications at any given time.

79. *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 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 so that the lender could determine whether an applicant qualified for a PPP 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;
- g. send adverse action notices for declined loans;
- h. resubmit loans with corrected information if needed; and
- i. initiate payment of loan proceeds.

80. The Technology Platform also provided lenders with cybersecurity protection.

81. Womply released the Technology Platform in 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 around-the-clock effort to develop and maintain these APIs, and Womply engineers continued to refine the Technology Platform throughout the remainder of the PPP.

82. Womply's Technology Platform allowed lenders to use, 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 that made processing loans more efficient. 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.

83. Fifteen lenders and non-lender entities (which referred PPP loans to lenders) contracted with Womply for PPP loan applicant referral services. 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.

E. In 2020, Benworth FL Funds Fewer Than 1,000 PPP Loans.

84. Benworth FL is a limited liability company organized under the laws of Florida founded by Mr. Navarro in 2008. Mr. Navarro is the founder, president, CEO [REDACTED] of Benworth FL.

85. Benworth FL is a licensed mortgage lender whose business is focused on originating and servicing mortgage loans that traditional banks would not underwrite. Benworth FL refers to these arrangements as “hard money loans,” which are funded by private investors.

86. These “hard money loans” do not always work out well for the borrowers. [REDACTED] In 2017, Benworth FL made headlines by foreclosing on the family home of a 14-year-old girl with cerebral palsy whose parents had stopped making monthly payments because they had been “misled into taking out a high-interest, short term loan . . . that they could not afford to pay back.”⁸ Eventually,

⁸ Areeba Shah, *Li'l Marco's big loan: The tale of a senator, his private-equity pal and an inexplicable appointment*, SALON (Sept. 30, 2022), <https://www.salon.com/2022/09/30/lil-marcos-big-loan-the-tale-of-a-senator-his-private-equity-pal-and-an-inexplicable-appointment/>; see also Nicholas Nehamas, *Disabled Miami teen, parents won't lose home where she grew up*, THE MIAMI HERALD (May 27, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/kendall/article211986789.html>; Nicholas Nehamas, *The loan came due. Her parents couldn't pay. Now a teen with cerebral palsy could lose her home*, THE MIAMI HERALD (Apr. 14, 2017), <https://www.miamiherald.com/news/local/community/broward/article144479184.html>.

Benworth FL agreed to settle the case in return for a payment from the family of \$240,000, which was nearly \$100,000 more than the original loan amount.

87. Prior to 2020, Benworth FL was not an SBA-approved lender and did not issue any SBA-sponsored loans. PPP was Benworth FL's first experience with SBA lending and regulations. (Ex. 1, August 5, 2022 Holland & Knight letter.)

88. During the onset of the COVID-19 pandemic in 2020, Benworth FL's application to the SBA to become a PPP lender was approved. Thereafter, the majority of Benworth FL's staff pivoted from the mortgage business to reviewing PPP loan applications. Benworth FL also hired over 30 employees to review PPP loan applications.

89. In 2020, [REDACTED] Benworth FL identified approximately [REDACTED] PPP loan applicants and funded approximately 700 PPP loans with a total principal amount of approximately \$22 million.

90. In connection with funding those PPP loans in 2020, Benworth FL received processing fees from the SBA totaling more than [REDACTED] and interest on the loans. Benworth FL's financial statement for the year ending 2020 reported that [REDACTED]

F. In 2021, Benworth FL Contracts For Womply's Referral And Technology Services To Make Processing And Managing PPP Loans More Efficient.

91. On February 25, 2021, Benworth FL and Womply entered into an Agent Agreement and Womply Developer Order Form (together, the "**February Agreements**").

92. On April 14, 2021, Benworth FL and Womply entered into an Amended and Restated PPP Loan Referral Agreement (the "**Referral Agreement**") and a new Womply Developer Order Form (the "**Order Form**," and together with the Referral Agreement, the

“**Agreements**”). The Referral Agreement is attached hereto as Exhibit 2. The Order Form is attached hereto as Exhibit 3.

93. The Order Form also “includes and incorporates . . . the Womply Master Developer Agreement located at <http://www.womply.com/mda>” (the “**Master Developer Agreement**”). The Master Developer Agreement is attached hereto as Exhibit 4.

94. The Agreements superseded the February Agreements.

i) Benworth FL Agreed To Pay Womply A 1% Referral Fee For Womply’s PPP Referral Service.

95. Pursuant to the Referral Agreement, Benworth FL agreed to receive referrals of PPP loan applicants from Womply through the Fast Lane Technology Platform.

96. Section 1.1 of the Referral Agreement provides that “Womply may, from time to time, refer to [Benworth FL] such PPP loan applicants as Womply shall, in its sole and absolute discretion, deem appropriate (each such applicant a ‘Referral’).” (Ex. 2 § 1.1.)

97. The Referral Agreement makes clear that Womply was only providing a referral service to Benworth FL pursuant to the agreement, that Womply was not vouching for the applicants it referred, and that Benworth FL was solely responsible for determining whether to fund an applicant’s PPP loan.

98. Specifically, the Referral Agreement states that “[Benworth FL] desires to engage in the origination, marketing, underwriting, and funding of loans, as well as the servicing, management and liquidation of the subsequently resulting loan portfolios, funded and created under the [SBA PPP],” and that “[Benworth FL] has the ability to independently evaluate, process, close, service, liquidate, and litigate commercial loans.” (*Id.* at 1.) The Referral Agreement also clarifies that “Benworth FL and Womply desire to establish an independent contractor relationship

whereby Womply provides referrals to [Benworth FL] in connection with potential loan applications seeking loans under the PPP.” (*Id.*)

99. Section 1.2 of the Referral Agreement also states in all capital letters:

WOMPLY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR, THE ACCURACY, LAWFULNESS, OR COMPLETENESS OF ANY INFORMATION ACCOMPANYING A REFERRAL. FOR THE AVOIDANCE OF DOUBT, WOMPLY DOES NOT ENDORSE ANY REFERRAL. [BENWORTH FL] ASSUMES SOLE RESPONSIBILITY REGARDING WHETHER OR NOT ANY REFERRAL SHOULD BE SENT TO THE SBA FOR REVIEW.

(*Id.* § 1.2.)

100. If Womply were responsible for determining whether an applicant qualified for a loan, or whether a loan should be funded, then Womply may be considered an LSP under SBA regulations. However, the Referral Agreement expressly provides that “Womply is not a lender or lender service provider as defined by the SBA,” reflecting that both Benworth FL and Womply understood that Womply was not underwriting loans or otherwise making lending decisions. (*Id.* § 1.3.) Consistent with this understanding, on September 9, 2021, [REDACTED]

101. In exchange for Womply’s referral service, Benworth FL agreed to pay Womply a Referral Fee equal to 1% of the amount of each Womply-referred PPP loan that Benworth ultimately funded. (*Id.* § 2.2.) This 1% Referral Fee is consistent with the Borrower Agent Fee Cap, which limits the fees an agent can receive for providing assistance in preparing an application for a PPP loan and referral of the applicant to the lender at 1% of the loan amount. (*See supra* ¶¶ 48, 59.)

ii) Benworth FL Agreed To Pay Womply An API Fee And A Technology Fee For Womply's Technology Services And Access To Its Technology Platform.

102. Pursuant to the separate Order Form, Womply agreed to provide Benworth with its “API Package,” which included access to Womply’s Fast Lane Technology Platform and the numerous technology services integrated therein.

103. Womply’s information extraction and verification technology services were specifically referred to in the Order Form as “Tax Documents,” “Business Fraud Analytics,” “Bank Data,” “Identity,” and “Account Verification,” and the Technology Platform was referred to as “PPP Portfolio Management System.” (Ex. 3 at 1.) The Order Form also made clear that these services include “integrations with and/or links to certain third-party service providers (including, without limitation, Plaid, Docusign, LexisNexis, Teslar, Inscribe, Oculous, AWS Mechanical Turk, Mindee, Persona, Twilio, Sendgrid, etc.) (‘Third-Party Providers’).” (*Id.* § 1.2.)

104. Like the Referral Agreement, the Order Form makes clear that Benworth FL retained responsibility for determining which PPP loans to fund.

105. Section 1.1 of the Order Form includes a disclaimer similar to the one found in Section 1.2 of the Referral Agreement. It states:

WOMPLY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR, THE ACCURACY, LAWFULNESS, OR COMPLETENESS OF ANY INFORMATION ACCOMPANYING A REFERRAL (I.E., OUTPUT MADE AVAILABLE VIA THE SERVICES). FOR THE AVOIDANCE OF DOUBT, WOMPLY DOES NOT ENDORSE ANY REFERRAL. [BENWORTH FL] ASSUMES SOLE RESPONSIBILITY REGARDING WHETHER OR NOT ANY REFERRAL SHOULD BE SENT TO THE SBA FOR REVIEW.

(*Id.* § 1.1.)

106. Section 1.2 of the Order Form also states: “WOMPLY HAS NO CONTROL OVER AND ASSUMES NO RESPONSIBILITY FOR THE ACTIONS, ERRORS, OR OMISSIONS OF THE THIRD PARTY PROVIDERS.”

107. In addition, like in the Referral Agreement, and consistent with [REDACTED] [REDACTED] (*see supra* at ¶ 100), the Order Form provides that “Womply is not a lender or lender service provider as defined by the SBA.” (Ex. 3 § 1.3.)

108. In exchange for this “API Package,” Benworth FL agreed to pay Womply an API Fee and a Technology Fee for each funded PPP loan that Benworth FL originated and processed using Womply’s Technology Platform and technology services. (*Id.* at 1, § 2.)

109. The API Fee was a flat fee of \$250 for each funded PPP loan. (*Id.* at 1.)

110. The Technology Fee was calculated as a percentage of the Lender Processing Fee that Benworth FL received from the SBA for funding the PPP loan, with the precise percentage determined by the total number of Womply-referred loans that Benworth FL funded.

111. Specifically, Section 2.1.3 of the Order Form includes the following table specifying the Technology Fees Womply earns based on the volume of Womply-referred loans that Benworth FL funds:

Tier	Referred Loan Tiers	Technology Fee Percentage
1	1 through 30,000 Referred Loans	50% of the Lender Processing Fee for each Referred Loan
2	30,001 through 45,000 Referred Loans	60% of the Lender Processing Fee for each Referred Loan
3	45,001 through 60,000 Referred Loans	70% of the Lender Processing Fee for each Referred Loan
4	60,001 through 300,000 Referred Loans	80% of the Lender Processing Fee for each Referred Loan

5	Greater than 300,000 Referred Loans	70% of the Lender Processing Fee for each Referred Loan
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(*Id.* § 2.1.3.)

112. Section 2 unambiguously states that “the *max* percentage” in the table above—*i.e.*, the highest percentage in the “Technology Fee Percentage” column—“applies to Referred Loans *funded prior to achieving the Referred Loan Volume.*” (*Id.* § 2.1 (emphasis added).)

113. Therefore, when Benworth FL funded the first 30,000 Referred Loans, Womply was entitled to a Technology Fee equal to 50 percent of the Lender Processing Fee for each Referred Loan. But, when Benworth FL funded loan 30,001, Womply was entitled to 60 percent of the Lender Processing Fee for that one loan, plus 60 percent of the Lender Processing Fee for all loans “funded prior to achieving the Referred Loan Volume” of 30,001. In other words, Benworth FL must pay Womply an additional 10 percent of the Lender Processing Fee for each of the first 30,000 Referred Loans. Likewise, for loan 60,001, Womply is entitled to 80 percent of the Lender Processing Fee for that one loan, plus 80 percent of the Lender Processing Fee for all loans “funded prior to achieving the Referred Loan Volume” of 60,001.

114. However, when Benworth FL achieves the Referred Loan Volume of 300,001, Womply is entitled to 70 percent of the Lender Processing Fee for that loan and all future Referred Loans, but the 70 percent does not apply to any “Referred Loans funded prior to achieving the Referred Loan Volume.” This is because only the “max percentage” achieved—in this case, 80 percent—applies to “Referred Loans funded prior to achieving the Referred Loan Volume” of 300,001. (*Id.* § 2.1.3.)

115. In sum, pursuant to Section 2 of the Order Form, Benworth FL is obligated to pay Womply Technology Fees equal to 80 percent of the Lender Processing Fee for the first 300,000

funded PPP loans and 70 percent of the Lender Processing Fee for each additional funded PPP loan.

116. Under Section 2.2 of the Order Form, Benworth FL is entitled to a credit for any Referral Fees owed to Womply under the Referral Agreement. (*Id.* § 2.2 (“Technology Fees payable to Womply for any Referred Loan shall be reduced by any Referral Fee paid to Womply for the same Referred Loan.”).)

117. As an example, assuming Benworth FL funded a PPP loan of \$10,000 in tier 4 of the table in paragraph 111 above, Benworth FL would receive a Lender Processing Fee of \$2,500 (plus interest on the loan), and Benworth FL would owe Womply: (i) a Referral Fee of \$100 (calculated as 1% of the \$10,000 loan); (ii) an API Fee of \$250; and (iii) a Technology Fee of \$1,900 (calculated as 80% of Benworth FL’s \$2,500 Lender Processing Fee, minus the \$100 Referral Fee).

118. The Order Form further provides that “where the Lender Processing Fee for a given Referred Loan is two-hundred and fifty dollars (\$250) or less . . . [t]here will be no Technology Fee due from [Benworth FL] to Womply.” (*Id.* § 2.1.2–2.1.2.1.) In addition, “[s]uch Referred Loans will be disregarded when calculating the Referred Loan Tiers” above. (*Id.* § 2.1.2.2.)

119. At the time Womply and Benworth FL executed the Agreements, it was evident that for loans below a certain threshold amount, Benworth FL would pay Womply more in fees than Benworth FL would receive in Lender Processing Fees for funding those relatively small loans. For example, if Benworth FL funded a PPP loan of \$800 in tier 4 of the chart in paragraph 111 above, it would receive a Lender Processing Fee of \$400, but it was obligated to pay Womply a Referral Fee of \$8, an API Fee of \$250, and a Technology Fee of \$312 for a total of \$570. However, Womply later agreed that for each PPP loan Benworth funded, Womply would not

invoice Benworth FL for fees greater than the Lender Processing Fee Benworth FL received for funding the loan. This meant that Benworth FL would never lose money for funding a PPP loan, but for certain relatively small loans, Benworth FL may keep only the interest on the loans.

iii) Benworth FL Agreed To Pay Womply Interest If Benworth FL Failed To Timely Pay Womply Its Fees.

120. The Order Form provides that “[w]ithin fifteen (15) days of [Benworth FL] receiving the Lender Processing Fee from the SBA, [Benworth FL] will pay Womply all associated Technology Fees for each applicable Referred Loan.” (*Id.* at § 2.3.) The Referral Agreement also provides that “[w]ithin thirty (30) days of [Benworth FL] receiving the Lender Fee from the SBA, [Benworth FL] will pay Womply all associated Referral Fees for each applicable Referred Loan.” (Ex. 2 § 2.3.) On information and belief, lenders were typically paid Lender Processing Fees from the SBA within seven days of funding a corresponding PPP loan.

121. Delinquent Referral Fees, API Fees, and Technology Fees incur interest under Womply’s Referral Agreement and the Master Developer Agreement. The Referral Agreement states that Referral Fee payments not timely made “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.” (*Id.* § 2.4.) Similarly, the Master Developer Agreement says that late payments “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.” (Ex. 4 § 2.)

iv) Womply Is Entitled To Terminate The Agreements If Benworth FL Fails To Pay Womply’s Fees.

122. The Referral Agreement entitles Womply to terminate the Referral Agreement “immediately upon delivery of a Notice of Termination if [Benworth FL] is in material breach of any warranty, representation, covenant or obligation under this Agreement and is not able to cure such breach within seven (7) calendar days of receiving the Notice of Termination.” (Ex. 2 § 4.2.)

In addition, Section 3.2 of the Master Developer Agreement states that, if Benworth FL fails to satisfy its payment obligations to Womply, then Womply is entitled to “immediately suspend the Services,” in addition to other remedies. (Ex. 4 § 3.2.)

123. In the event Womply terminates the Agreements, Womply remains entitled to recover all fees that are due, become due, or will become due under the Agreements, as well as the costs Womply incurs in connection with collecting those fees. (Ex. 2 § 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”); Ex. 3 § 2 (providing that Benworth FL will be responsible for “Womply’s costs of collection in the event of [Benworth FL’s] delinquent payment”).)

G. Benworth FL Funds More Than 305,000 PPP Loans In 2021 Using Womply’s Technology Platform But Fails To Pay Womply All Of Its Fees.

124. Benworth FL processed, funded, and managed **305,790** Womply-referred PPP loans with a principal amount of more than **\$4 billion** in just four months. In connection with processing, funding, and managing those PPP loans using Womply’s Technology Platform, Benworth FL received more than \$680 million in Lender Processing Fees from the SBA, as well as interest on the \$4 billion in loans.

125. However, while lacking any legal basis for doing so, Benworth FL refused to pay Womply more than \$153 million in Referral Fees, API Fees, and Technology Fees now well past due under the Agreements. Those unpaid fees accrue interest at the agreed rate of 1.5% per month, and accrued interest to date on the unpaid fees totals more than \$44 million.

126. The PPP loans for which Benworth FL underpaid Womply, or failed to pay Womply at all, fall into three buckets:

i) Benworth FL Underpays Technology Fees For The First 300,000 Womply-Referred PPP Loans That Benworth FL Funded.

127. As discussed above, under Section 2 of the Order Form, Benworth FL must pay Womply Technology Fees equal to 80 percent of its Lender Processing Fee for each of the first 300,000 Referred Loans, and 70 percent of its Lender Processing Fee for each additional Referred Loan. (Ex. 3 § 2.1.)

128. And, in fact, Benworth complied with Section 2 of the Order Form for some loans. After Benworth FL funded more than 60,000 Referred Loans and therefore was in tier 4 of the Technology Fee chart, Benworth FL paid Womply 80% of the Lender Processing Fee that Benworth FL received in connection with Referred Loans it funded in earlier tiers.

129. However, Benworth FL later interpreted Section 2 of the Order Form in a manner that is plainly inconsistent with its unambiguous terms. Benworth FL incorrectly interprets Section 2 of the Order Form as requiring Benworth FL to pay Womply [REDACTED]

[REDACTED] As a result of Benworth FL's misinterpretation of the Order Form, Benworth FL underpaid Womply its Technology Fees for 228,785 PPP loans, resulting in a shortfall in Technology Fee payments to Womply of \$56,355,799.

130. Under the Agreements, Benworth FL owes interest on these unpaid Technology Fees totaling more than \$16.2 million.

ii) Benworth FL Withholds All Fees Due On Approximately 40,000 PPP Loans For Which Benworth FL Claims It Fails To Make Enough Profit.

131. Benworth FL also failed to pay Womply any fees for 40,563 PPP loans for which Benworth FL would make less than \$250 per loan (not including interest) after paying Womply's fees (the "**Small-Dollar Loans**"). Benworth FL admitted that it was withholding these fees in the

hopes that Womply would agree to renegotiate the fee structure in the Agreements and allow Benworth FL to keep more of its Lender Processing Fees for those loans.

132. On July 1, 2021, Benworth FL sent an email to Womply identifying 40,563 Small-Dollar Loans. Benworth FL calculated that it owed Womply a total of more than \$40 million for these Small-Dollar Loans, but Benworth FL demanded that Womply agree to a new fee structure that would allow Benworth FL to keep a “\$500 distribution per loan,” which amounted to a discount on Womply’s fees totaling \$20,281,500.

133. Benworth FL withheld from Womply the total of over \$42 million as leverage in the hopes that Womply would renegotiate the parties’ Agreements. Indeed, Benworth FL made clear that if Womply agreed to Benworth FL’s demands, Benworth FL “could immediately release these funds to [Womply].” Womply refused Benworth FL’s demands.

134. The fees due to Womply on the Small-Dollar Loans total \$41,968,158. Under the Agreements, Benworth FL owes interest on these unpaid fees totaling more than \$12 million.

135. Even under Benworth FL’s incorrect interpretation of Section 2 of the Order Form regarding the calculation of Technology Fees, Benworth FL owes Womply \$39,043,108 in delinquent fees and more than \$11.2 million in interest on the Small-Dollar Loans.

iii) Benworth FL Withholds All Of Womply’s Fees For Approximately 28,000 Additional PPP Loans For No Discernable Reason.

136. Benworth FL funded and, on information and belief, received Lender Processing Fees for 28,067 Womply-referred PPP loans for which it failed to pay Womply any of the Referral Fees, API Fees, or Technology Fees that Benworth FL agreed to pay in the Agreements (the “**Additional Unpaid Loans**”). These loans are in addition to the Small-Dollar Loans identified above.

137. At the time these fees became due, Benworth FL did not provide Womply with any explanation for why the fees were being withheld.

138. The fees due to Womply on the Additional Unpaid Loans total \$55,369,387. Under the Agreements, Benworth FL owes interest on these unpaid fees totaling more than \$15.9 million.

139. Even under Benworth FL's incorrect interpretation of Section 2 of the Order Form regarding the calculation of Technology Fees, Benworth FL owes Womply \$50,145,053 in delinquent fees and more than \$14.4 million in interest on the Additional Unpaid Loans.

H. Womply Terminates The Agreements For Benworth FL's Material Breach.

140. Benworth FL's failure to pay Womply its fees constitutes a material breach of the Agreements.

141. On July 21, 2021, Womply sent an email to Mr. Navarro at Benworth FL detailing some of the fees Benworth FL failed to pay. Among other things, the email stated:

We are disappointed and concerned that Benworth has not paid or confirmed that it intends to pay Womply the over \$44 million in fees that Benworth admits it has been withholding from Womply in connection with nearly 41,000 referred loans. We also have reason to believe that Benworth has failed to pay Womply approximately \$103 million in total fees now due in connection with approximately 28,000 other loans. These late fees have accrued interest totaling \$660,000 as of today, and they are continuing to accrue interest at a rate of about \$28,000 per day.

If we do not receive a payment of all outstanding fees totaling \$147 million by COB tomorrow, Thursday July 22nd, we will be left with no option but to send Benworth a notice of termination pursuant to Section 4.2 of the Amended and Restated PPP Loan Referral Agreement for Benworth's material breach of its payment obligations. We are saddened it has come to this, but we must insist that Benworth comply with its contractual obligations.

142. Mr. Navarro did not dispute that Benworth FL owed Womply these fees. But Benworth FL did not pay Womply any of the outstanding fees.

143. In accordance with the Agreements, Womply notified Benworth FL of its material breach by email on July 23, 2021, and delivered a Notice of Termination to Benworth FL by First Class Certified Mail on July 29, 2021.

144. Again, neither Mr. Navarro nor anyone else at Benworth FL disputed that Benworth FL owed Womply substantial fees. Benworth FL failed to cure its material breach of the Agreements within seven days, and therefore the Agreements were terminated according to their terms.

I. Benworth FL Petitions The SBA To Issue New Rules To Retroactively Cap Womply's Fees And Seeks To Influence [REDACTED].

145. On August 16, 2021, Benworth FL (and two other Florida lenders that also sought to avoid paying Womply its fees) sent a letter to the SBA asking it to issue new rules that would have retroactively reduced the amount of fees Womply could charge for its technology services (the “**August 16 Letter**”). The August 16 Letter is attached hereto as Exhibit 5.

146. In the August 16 Letter, Benworth FL identified the April 2020 PPP Rule and its Borrower Agent Fee Cap regarding limits on fees that lenders can pay borrower agents for PPP loan application preparation and referral services. Ignoring the January 2021 PPP Rule, Benworth FL incorrectly claimed 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 December 2020 Consolidated Appropriations Act and, without referring to Womply directly, stated that “[t]he absence of this guidance has caused considerable ambiguity and unnecessary disputes between lenders and loan agents.” (Ex. 5.)

147. On information and belief, the reference to “loan agents” in the August 16 Letter was a reference to Womply.

148. Benworth FL 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.” (*Id.*) Unlike the January 2021 Final Rule, which regulated the fees a borrower agent could receive only for providing “assistance in preparing an application for a PPP loan,” Benworth FL’s proposed rule would have capped an agent’s fees for *any* service. On information and belief, Benworth FL was hoping that it could rely on such a rule to refuse to pay Womply all of the fees Benworth FL agreed to pay for Womply’s referral and technology services.

149. Mr. Navarro also improperly sought to leverage his connection to [REDACTED]

[REDACTED]

[REDACTED]

150. Mr. Navarro has hosted several campaign fundraisers for [REDACTED] and served as the [REDACTED]. Mr. Navarro served as [REDACTED] for [REDACTED] 2016 reelection campaign. Mr. Navarro has also served as the [REDACTED] campaign for reelection to [REDACTED] in 2022 and is a director of [REDACTED], a not-for-profit corporation organized under the laws of Florida. Mr. Navarro has personally contributed over \$25,500 to [REDACTED] political campaigns and associated political action committees throughout the [REDACTED] career.

151. Indeed, Mr. Navarro’s attempts to influence [REDACTED] and integrate himself into the [REDACTED] circle included the facilitation of a \$850,000 bridge loan to [REDACTED] in January 2021, which was only disclosed 18 months later when [REDACTED] included it on a financial disclosure form. In April 2021, Mr. Navarro was appointed to the Southern District of Florida’s

Judicial Advisory Commission by [REDACTED], which is responsible for making formal recommendations to the Senator and Congress to fill federal judicial vacancies.

152. On August 16, 2021, Benworth FL [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

153. On August 16, 2021, Mr. Navarro [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. Ten days later, [REDACTED] sent a letter addressed to Administrator Guzman of the SBA, dated August 26, 2021 (the “**August 26 Letter**”). In the August 26 Letter, [REDACTED] writes that “potential ambiguity” in the rules about agent fees “has created confusion between lenders and loan agents in my state, and should be remedied by a clarification from the SBA regarding how such loans should be treated.” The August 26 Letter is attached hereto as Exhibit 6.

J. The SBA Rejects Benworth FL’s Efforts To Have New Agent Fee Rules Issued.

155. The SBA did not adopt Benworth FL’s proposal to issue new rules regarding agent fees.

156. On September 14, 2021, the SBA sent a letter (the “**September 14 Letter**”) to Benworth FL that simply referred back to the rules regarding agent fees in the January 2021 PPP Rule, which are identical to the rules in the earlier April 2020 PPP Rule. Therefore, the SBA

confirmed to Benworth FL what was already clear: that the SBA limited the fees an agent could collect from a lender to 1% of a PPP loan for providing “assistance in preparing an application for a PPP loan (including referral to the lender),” but not for other services. A copy of the September 14 Letter is attached hereto as Exhibit 7.

K. Womply Commences Arbitration Against Benworth FL To Recover Its Fees.

157. On August 25, 2021, Womply commenced arbitration proceedings against Benworth FL in San Francisco, California, pursuant to Section 10 of the Referral Agreement, by filing a Demand for Arbitration and Statement of Claim with JAMS.

158. In the Arbitration, Womply seeks payment of the \$153,063,872⁹ in Referral Fees, API Fees, and Technology Fees that are past due under the Agreements, as well as the interest that has accrued on those late fees under the Agreements.

159. On October 1, 2021, Benworth FL filed its Answer to Womply’s Demand for Arbitration, Affirmative Defenses and Counterclaims. However, each of Benworth FL’s counterclaims contained therein are either legally deficient or moot.

160. Two of Benworth FL’s principal affirmative defenses and all of its counterclaims are based on the argument that Womply is an “agent” under SBA regulations, and therefore Womply can only collect its 1% Referral Fee, even for giving Benworth FL access to its Technology Platform and technology services, under the Borrower Agent Fee Cap. Benworth FL therefore claims that it need not pay Womply the more than \$153 million due under the Agreements. It also claims that Womply must disgorge API and Technology Fees that Benworth FL already paid Womply for services rendered.

⁹Based on additional analysis and information, Womply now estimates that Benworth FL owes Referral Fees, Technology Fees, and API fees totaling \$153,693,344.

161. As described above (*supra* ¶¶ 59-62), Benworth FL’s argument that the Borrower Agent Fee Cap limits all of Womply’s fees for all of its services is plainly wrong. To the extent any of Womply’s services are subject to the Borrower Agent Fee Cap, it is Womply’s referral services, for which Benworth FL agreed to pay Womply a Referral Fee equal to 1% of a PPP loan amount consistent with the Borrower Agent Fee Cap. Womply’s Fast Lane Technology Platform and extensive technology services do not constitute “assistance with preparing a PPP loan application (including referral to the lender);” instead, they made it more efficient for Benworth FL to *process* the loan applications. Therefore, the API and Technology Fees that Benworth FL agreed to pay for access to the Technology Platform and integrated technology services are not subject to the Borrower Agent Fee Cap.

162. Benworth FL’s interpretation of the Borrower Agent Fee Cap has already been rejected by the United States District Court for the Northern District of Texas (the “**Texas Court**”) in *Oto Analytics, Inc. v. Capital Plus Financial, LLC*, No. 3:21-CV-2636-B, 2022 WL 1488441, at *8–10 (N.D. Tex. May 11, 2022). In that case, Womply brought claims against another PPP lender for failure to pay Womply’s fees, and the lender sought to dismiss Womply’s claims, arguing (among other things) that Womply’s Technology Fees were illegal because they exceeded the 1% Borrower Agent Fee Cap. The Texas Court rejected that argument, holding that “Referral Fees and Technology Fees are for distinct services” and that the Borrower Agent Fee Cap “does not foreclose a Technology Fee like the one” charged by Womply. *Id.* at *9.

163. In its affirmative defenses, Benworth FL also argues that Womply is barred from recovering its outstanding Referral Fees, because Womply “promised Benworth that it would materially improve its technology platform” to detect fraudulent applications, but that Womply “did not intend to honor that promise when it was made.” That affirmative defense is not only

factually baseless, it also is legally deficient. Among other reasons, the Agreements between Womply and Benworth FL make clear that Womply is not responsible for the “accuracy, lawfulness, or completeness of an applicant’s information” and that Benworth FL is “solely responsible” for determining whether to submit applicant information to the SBA for approval. (Ex. 2 § 1.2; Ex. 3 § 1.1.)

164. Benworth FL also claimed in the Arbitration that it was holding “any disputed fees in trust until its dispute with Womply . . . is resolved.” As discussed below, that representation was false when it was made.

**L. Womply Discovers That Benworth FL [REDACTED]
[REDACTED] To Avoid A Judgment In The Arbitration.**

165. Through discovery in the Arbitration, Womply has learned that Defendants [REDACTED]
[REDACTED]
[REDACTED]
(the “**Fraudulent Transfer**”).

166. Womply first learned of the Fraudulent Transfer during a deposition of Mr. Navarro on October 26, 2022. However, [REDACTED]
[REDACTED]
[REDACTED]. Womply thereafter filed a motion to compel discovery into Benworth PR, and the arbitrator in the Arbitration ordered Benworth FL to produce Benworth FL’s agreements with Benworth PR and to produce Mr. Navarro for a second deposition to answer questions regarding Benworth PR [REDACTED]
[REDACTED]. Womply’s counsel took Mr. Navarro’s deposition again on December 16, 2022. As discussed below, that additional discovery revealed that [REDACTED]

i) The Navarros Started Planning To Move Assets Out Of Benworth FL As Early As May 2021.

167. On May 4, 2021, the SBA announced that most PPP funding had been exhausted, but that approximately \$8 billion remained for “community financial institutions.” Benworth FL is not a community financial institution, and therefore it could no longer submit PPP loan applicant information to the SBA for approval as of May 4, 2021. Accordingly, by May 4, 2021, Benworth FL had submitted all of the Womply-referred PPP loans that it decided to fund and, assuming those loans were approved by the SBA, Benworth FL could calculate the fees it would owe Womply.

168. On May 31, 2021, Benworth FL entered into a Loan Servicing Agreement (the “**Original LSA**”) with “Benworth Capital Partners PR,” which did not exist and was described in the Original LSA as a “company in formation under the laws of the Commonwealth of Puerto Rico.” Mr. Navarro executed the Original LSA on behalf of Benworth FL, and Ms. Navarro executed it on behalf of the non-existent Puerto Rico company. The Original LSA is attached hereto as Exhibit 8.

169. The Original LSA provided that the Puerto Rico company would provide Benworth FL with two categories of services. One category of services was related to servicing Benworth FL’s traditional mortgage loans. The other category of services was related to Benworth FL’s PPP loans. As to the latter category, the Original LSA provided that the Puerto Rico company would act as Benworth FL’s “agent to assist with its portfolio of [PPP] loans, mainly by assisting with obtaining Forgiveness for said loans, Servicing, administering Guaranteed Purchase, and to provide Fraud monitoring for said loans.”

170. After Mr. and Ms. Navarro formed Benworth PR one month later on June 28, 2021, they executed an Amended Loan Servicing Agreement dated September 23, 2021 (the “**Amended LSA**,” and together with the Original LSA, the “**LSAs**”), on behalf of Benworth FL and Benworth PR, respectively. The Amended LSA is attached hereto as Exhibit 9.

171. The Amended LSA provides additional detail regarding the administrative services Benworth PR would provide Benworth FL related to its PPP loans. Specifically, Benworth PR agreed to: (i) “communicate with borrowers to encourage them to apply for forgiveness;” (ii) “monitor all fraudulent loan applications,” “submit SBA OIG investigations,” and “submit Suspicious Activity Reports to FINCEN of the United States Treasury Department;” (iii) “facilitate the response to all subpoenas and request for information from any and all governmental agency;” (iv) “submit fraudulent or non-performing loans to the United States Small Business Administration (SBA) for Guaranteed Purchase” (*i.e.*, for the SBA to purchase the loan pursuant to the SBA’s guarantee); (v) “administer servicing functions;” and (vi) “work with [Benworth FL’s] customers who have submitted a Forgiveness Application to the SBA and are required by the SBA to provide additional information needed to the SBA to process the Forgiveness Application” (collectively, the “**LSA PPP Services**”). (*Id.* at 2-3.)

ii) Benworth PR’s Fees [REDACTED] And Are Not Reasonable For The Services Benworth PR Provided.

172. For the LSA PPP Services, Benworth FL agreed to pay Benworth PR \$500 per PPP loan for loan forgiveness services and \$50 per PPP loan for services related to fraud monitoring and guaranteed purchase. Benworth FL also agreed to pay an additional 65 basis points of the outstanding amount of a PPP loan for “loan Servicing.” The Amended LSA also provides for additional potential fees. Specifically, if Benworth cancels “servicing,” a “\$50.00 fee per [PPP loan] cancelled shall apply in addition to the minimum servicing fee charge per file.” Benworth

PR also has the ability to obtain fees “at an hourly rate of \$75.00 to \$250.00 per hour” for additional services, including “trial testimony, deposition testimony, travel and waiting time in litigation matters.”

173. [REDACTED]

174. [REDACTED]

175. [REDACTED]

176. Benworth FL funded a total of approximately 311,000 PPP loans. Therefore, at a rate of \$550 per PPP loan, Benworth FL agreed to pay Benworth PR more than *\$171 million* in fees pursuant to the LSAs. Had Benworth FL instead [REDACTED]

177. For certain relatively small PPP loans, Benworth FL pays Benworth PR more in fees to service the loans under the LSA than Benworth FL received to fund the loans in the first place. For example, for making a \$1,000 PPP loan, Benworth FL receives \$500 in Lender Processing Fees from the SBA, but it pays Benworth PR \$550 to service that same loan. And this is before taking into account the fees Benworth FL agreed to pay Womply.¹⁰ [REDACTED]

178. In addition to the \$550 per PPP loan fee, Benworth PR also may be entitled to 65 basis points of the outstanding amount of Benworth FL's PPP loans. [REDACTED]

¹⁰ As discussed above, Benworth FL's agreements with Womply also provide that, for some loans, Benworth FL will owe Womply more in fees than Benworth receives for funding the loan. However, Womply agreed that Benworth FL would never owe Womply more than it received for funding a loan, and Womply's damages claim in the Arbitration is consistent with that approach. By contrast, Mr. Navarro testified that [REDACTED]

[REDACTED]

[REDACTED] For the Womply-referred PPP loans, which have a principal amount of approximately \$4 billion, this could be up to an additional \$26 million in fees paid to Benworth PR.

179. Benworth FL also could receive additional fees for any servicing cancellation by Benworth, or if Benworth PR performs other services outside of the scope of the Agreements. Mr. Navarro testified [REDACTED]

iii) *Benworth FL* [REDACTED]

180. [REDACTED]

181. [REDACTED]

182. It also establishes [REDACTED]

183. It further shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

184. On information and belief, Benworth FL has transferred additional funds to Benworth PR for services related to Benworth FL's mortgage loans.

iv) Benworth PR Is Benworth FL's Puerto Rico Office.

185. While the Navarros formed Benworth PR as a separate entity, it functions as little more than Benworth FL's San Juan, Puerto Rico office.

186. Both Benworth FL and Benworth PR engage in the same business. In the Amended LSA, both Benworth FL and Benworth PR are described as a "mortgage lender/servicer" (Ex. 9 at 1), and [REDACTED]

187. [REDACTED]

[REDACTED]

188. The website www.benworthcapital.com lists both Benworth FL's Florida address and Benworth PR's Puerto Rico address as points of contact, does not differentiate between Benworth FL and Benworth PR, and refers to Benworth PR as Benworth FL's "office in San Juan, Puerto Rico."

189. Mr. Navarro's public profile on the website LinkedIn also states:

Bernie Navarro is Founder and President of Benworth Capital, a Florida-headquartered private equity licensed mortgage lender. Benworth offers hard money loans to purchase, refinance and for second mortgages on properties in Florida. Established in 2008, the company has grown to become one of the largest private equity lenders in Florida. *The Company also has offices in Puerto Rico.*

190. In addition, Benworth FL could have performed all of the LSA PPP Services itself. In fact, before the Navarros formed Benworth PR in June 2021, [REDACTED]

[REDACTED]

[REDACTED]

191. In a letter to Congress, Benworth FL explained that it conducted a “Transfer Pricing Analysis” in 2022 to determine “what functions were performed by what entity.” That analysis determined that “86 percent of the work to process and service PPP loans was performed” by Benworth PR, and the remaining 14 percent was performed by Benworth FL.

192. There is no valid reason for Benworth FL to outsource loan servicing to Benworth PR at exorbitant rates, causing Benworth FL to lose money on certain PPP loans, [REDACTED]

[REDACTED]

193. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

194. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

195. [REDACTED]

196. [REDACTED]

[REDACTED]

197. [REDACTED]

198. [REDACTED]

199. [REDACTED]

v) *The Navarros Formed Benworth PR* [REDACTED]

200. In the Arbitration, [REDACTED]

201. In any event, [REDACTED]

202. [REDACTED]

203. At his depositions, [REDACTED]

204. However, Mr. Navarro testified [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The following

excerpt is from Mr. Navarro's deposition:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi) *This Is Not The First Time Mr. Navarro Has Been Accused Of Diverting Assets To Avoid A Judgment.*

205. In *TotalBank Florida Bank Corp. v. Bernardo Enrique Navarro*, Case No. 2012-012858 (Fla. Cir. Ct. Miami-Dade Cnty.), filed April 2, 2012, a default judgment was entered against Mr. Navarro. A transcript from a January 29, 2014 hearing in *TotalBank* is attached hereto as Exhibit 10.

206. In that case, the judgment creditor sought to garnish Mr. Navarro's wages under suspicion that, while Mr. Navarro did not have personal assets sufficient to satisfy the judgment against him, Benworth FL did.

207. Benworth FL responded to the creditor by claiming it was not indebted to Mr. Navarro in any salary or wages and that it did not possess or control any of his property.

208. Under oath, Mr. Navarro revealed that Ms. Navarro owned 91% of Benworth FL, while her responsibilities at the company included washing the floors and typing. (*See* Ex. 10 at 8:5–9:23, 16:3–15.) ([REDACTED])

[REDACTED]

209. Thereafter, the creditor sought to depose Ms. Navarro, and Mr. Navarro moved for a protective order barring the deposition. In a hearing on the motion, the court allowed the deposition of Ms. Navarro to go forward, recognizing the creditor's concern that Mr. Navarro's

assets, including his interest in Benworth FL, were “being *diverted to [his] wife.*” (*Id.* at 17:20–18:4 (emphasis added), 17:20–19:22.)

M. The Arbitrator Grants Womply’s Emergency Request To Disclose Confidential Information Obtained Through Discovery To A Court.

210. After discovering the Fraudulent Transfer, Womply filed a motion in the Arbitration asking for permission to disclose documents and information it obtained through discovery in the Arbitration, which were covered by a protective order, to a court of competent jurisdiction so that Womply could pursue equitable and/or injunctive relief related to the Fraudulent Transfer (the “**Emergency Request**”).

211. On January 17, 2023, the Arbitrator issued an order granting Womply’s Emergency Request.

212. In the order, the Arbitrator stated:

In its Answer to Demand for Arbitration filed on October 1, 2021, Benworth alleges, in Paragraph 17, that it “has held the disputed fees in trust until its dispute with Womply, including the matter of fraudulent loans, is resolved.” [REDACTED]

213. The Arbitrator also concluded that “an extensive record has been developed concerning [REDACTED],” and “[a]t the very least, that record raises a triable issue regarding whether [REDACTED]

[REDACTED]
[REDACTED].”

214. The Arbitrator then noted that under the arbitration agreement between Benworth FL and Womply, Womply is permitted “to seek equitable or injunctive relief in a court of competent jurisdiction relating to [REDACTED]

[REDACTED].” The Arbitrator then ordered that:

The Parties shall be permitted to disclose Protected Material (as defined in the Stipulated Protective Order approved and adopted on January 19, 2022) to a court of law of competent jurisdiction to the extent necessary to assert or defend against claims and causes of action for equitable or injunctive relief arising from [REDACTED]

[REDACTED]. The parties shall, consistent with applicable law, take all reasonable and lawful steps to file the Protected Material under seal.

COUNT I – ACTUAL FRAUDULENT TRANSFER
(Against Benworth PR and Benworth FL)

215. Womply hereby incorporates paragraphs 1 through 214 as if fully stated herein.

216. Benworth FL owes Womply a debt of more than \$153 million in fees due under the Agreements, plus more than \$44 million in interest that continues to accrue.

217. Womply’s fees became due in and between May 2021 and August 2021.

218. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

219. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In addition, Benworth PR is effectively the Puerto Rico office of Benworth FL.

220. [REDACTED]

221. [REDACTED]

222. Defendants concealed the Fraudulent Transfer from Womply.

223. Benworth FL made misrepresentations to Womply in order to prevent Womply from discovering the Fraudulent Transfer. Benworth FL represented in the Arbitration that Womply's fees were being held "in trust," [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

224. Mr. Navarro and Ms. Navarro formed Benworth PR on June 28, 2021, three days before disclosing to Womply that Benworth FL had not paid all of Womply's fees when due.

225. [REDACTED] Womply commenced the Arbitration on August 25, 2021, against Benworth FL seeking payment of the fees due under the Agreements.

226. [REDACTED]

[REDACTED]

227. [REDACTED]

228. [REDACTED]

[REDACTED]

229. [REDACTED]

[REDACTED]

COUNT II – CONSTRUCTIVE FRAUDULENT TRANSFER
(Against Benworth PR and Benworth FL)

230. Womply hereby incorporates paragraphs 1 through 229 as if fully stated herein.

231. Benworth FL owes Womply a debt of more than \$153 million in fees due under the Agreements, plus more than \$44 million in interest that continues to accrue.

232. Womply's fees became due in and between May 2021 and August 2021.

233. [REDACTED]

234. [REDACTED]

235. [REDACTED]

236. [REDACTED]

237. [REDACTED]

238. Benworth FL made misrepresentations to Womply in order to prevent Womply from discovering the Fraudulent Transfer. Benworth FL represented in the Arbitration that Womply's fees were being held "in trust," but that was not true. [REDACTED]

239. Mr. Navarro and Ms. Navarro formed Benworth PR on June 28, 2021, three days before disclosing to Womply that Benworth FL had not paid all of Womply's fees when due.

240. [REDACTED] Womply commenced the Arbitration on August 25, 2021 against Benworth FL seeking payment of the fees due under the Agreements.

COUNT III – DECLARATORY JUDGMENT – ALTER EGO OR SUCCESSOR
(Against Benworth PR and Benworth FL)

241. Womply hereby incorporates paragraphs 1 through 240 as if fully stated herein.

242. Benworth FL owes Womply a debt of more than \$153 million in fees due under the Agreements, plus more than \$44 million in interest that continues to accrue.

243. An actual controversy exists regarding whether Benworth PR is liable for Benworth FL's debt to Womply.

244. The existence of Benworth PR as a separate legal entity from Benworth FL is a sham.

245. Benworth PR should be held liable for Benworth FL's debt to Womply, because Benworth PR is the alter ego of Benworth FL and/or because Benworth PR is the successor to Benworth FL.

246. The facts supporting holding Benworth PR liable for Benworth FL's debt to Womply under alter ego and/or successor liability include but are not limited to:

- a. Benworth PR was not formed for a reasonable business purpose;
- b. The Navarros formed Benworth PR on June 28, 2021, after Benworth FL incurred a debt to Womply;
- c. The Navarros formed Benworth PR for the fraudulent purpose of diverting assets from Benworth FL and leaving Benworth FL undercapitalized and unable to satisfy its debts to Womply;

- d. Benworth FL [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

- e. Under the LSA Agreements, Benworth FL transferred all of the benefits and liabilities associated with Benworth FL's PPP loan portfolio to Benworth PR, except Benworth FL's liability to Womply;
- f. Benworth FL misrepresented to Womply and the arbitrator in the Arbitration that it was holding Womply's fees "in trust" pending the resolution of the Arbitration;
- g. Benworth PR [REDACTED];
- h. Benworth PR services Benworth FL's mortgage and PPP loans and provides other services [REDACTED];
- i. Both Benworth PR and Benworth FL are [REDACTED];
- j. The website www.benworthcapital.com lists both Benworth FL's Florida address and Benworth PR's Puerto Rico address as points of contact, does not differentiate between Benworth FL and Benworth PR, and refers to Benworth PR as Benworth FL's "office in San Juan, Puerto Rico;"
- k. Mr. Navarro's public LinkedIn profile states that "Benworth Capital" is "a Florida-headquartered private equity licensed mortgage lender," and that it "also has offices in Puerto Rico;"
- l. Mr. Navarro [REDACTED];
- m. On information and belief, Mr. Navarro [REDACTED] without regard to their independent existence; and

n. Mr. Navarro [REDACTED]

[REDACTED]

247. Declaring that Benworth PR is the alter ego of or successor to Benworth FL is necessary to prevent Womply from being deprived of more than \$153 million in fees and \$44 million in interest now due and owing under the Agreements.

248. Womply respectfully requests that the Court declare that: (i) Benworth PR is the alter ego of and/or the successor to Benworth FL, and (ii) Benworth PR is liable for Benworth FL's debt to Womply.

COUNT IV – DECLARATORY JUDGMENT – VEIL PIERCING
(Against Bernardo Navarro, Claudia Navarro, and Benworth PR)

249. Womply hereby incorporates paragraphs 1 through 248 as if fully stated herein.

250. Benworth FL owes Womply a debt of more than \$153 million in fees due under the Agreements, plus more than \$44 million in interest that continues to accrue.

251. An actual controversy exists regarding whether Mr. and Ms. Navarro are personally liable for Benworth PR's debt to Womply and/or for unwinding the Fraudulent Transfer.

252. To the extent Benworth PR is liable for Benworth FL's debt to Womply, or Benworth PR must unwind the Fraudulent Transfer, and Benworth PR does not have sufficient assets to satisfy the debt or unwind the Fraudulent Transfer, as the case may be, Mr. and Ms. Navarro should be held personally liable for satisfying Benworth PR's obligations in that regard.

253. The facts supporting holding the Navarros personally liable for Benworth PR's obligations include but are not limited to:

a. Mr. Navarro has extensive or pervasive control over Benworth PR because:

- (i) [REDACTED]; (ii) [REDACTED]
[REDACTED]; (iii) [REDACTED]; (iv)

[REDACTED]

[REDACTED]; (v) [REDACTED]

[REDACTED]; (vi) [REDACTED]

[REDACTED]; and (vii) he is one of two people listed as an authorized person for Benworth PR on the Puerto Rico Registry of Corporations and Entities;

- b. Ms. Navarro has extensive or pervasive control over Benworth PR because she: (i) [REDACTED]; (ii) [REDACTED]

[REDACTED]; (iii) [REDACTED]

[REDACTED]; (iv) [REDACTED]; (v) [REDACTED]

[REDACTED]; and (vi) is one of two people listed as an authorized person for Benworth PR on the Puerto Rico Registry of Corporations and Entities;

- c. The Navarros have abused Benworth PR's corporate form to perpetrate a fraud against Womply;

- d. Benworth PR was not formed for a reasonable business purpose;

- e. The Navarros formed Benworth PR on June 28, 2021, after Benworth FL incurred a debt to Womply;

- f. The Navarros formed Benworth PR for the fraudulent purpose of [REDACTED]

[REDACTED]

[REDACTED];

- g. Benworth FL [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED];
- h. Under the LSA Agreements, Benworth FL transferred all of the benefits and liabilities associated with Benworth FL's PPP loan portfolio to Benworth PR, except Benworth FL's liability to Womply;
 - i. Benworth PR [REDACTED];
 - j. Benworth PR services Benworth FL's mortgage and PPP loans and provides other services [REDACTED];
 - k. Both Benworth PR and Benworth FL [REDACTED]
[REDACTED];
 - l. The website www.benworthcapital.com lists both Benworth FL's Florida address and Benworth PR's Puerto Rico address as points of contact, does not differentiate between Benworth FL and Benworth PR, and refers to Benworth PR as Benworth FL's "office in San Juan, Puerto Rico;"
 - m. Mr. Navarro's public LinkedIn profile states that "Benworth Capital" is "a Florida-headquartered private equity licensed mortgage lender," and that it "also has offices in Puerto Rico;"
 - n. Mr. Navarro [REDACTED]
[REDACTED]
 - o. On information and belief, Mr. Navarro [REDACTED]
[REDACTED] without regard to their independent existence; and
 - p. Mr. Navarro [REDACTED]
[REDACTED].

254. To the extent Benworth PR is undercapitalized and/or does not have sufficient funds to fully rescind the Fraudulent Transfer, Benworth PR's corporate fiction should be discarded, the Navarros should be held personally liable for Benworth PR's liabilities by piercing the corporate veil, and the Navarros should be subject to all equitable remedies ordered against Benworth PR.

255. Womply respectfully requests that the Court declare that, to the extent Benworth PR is liable for Benworth FL's debt to Womply, or Benworth PR must unwind the Fraudulent Transfer, and Benworth PR does not have sufficient assets to satisfy the debt or unwind the Fraudulent Transfer, as the case may be, Mr. and Ms. Navarro are personally liable for satisfying Benworth PR's obligations in that regard.

PRAYER FOR RELIEF

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

- a. Rescission of the Fraudulent Transfer;
- b. Attachment of Defendants' assets;
- c. A declaration that (i) Benworth PR is the alter ego of and/or the successor to Benworth FL, and (ii) Benworth PR is liable for Benworth FL's debt to Womply;
- d. A declaration that, to the extent Benworth PR is liable for Benworth FL's debt to Womply, or Benworth PR must unwind the Fraudulent Transfer, and Benworth PR does not have sufficient assets to satisfy the debt or unwind the Fraudulent Transfer, as the case may be, Mr. and Ms. Navarro are personally liable for satisfying Benworth PR's obligations in that regard;

- e. An award of Womply's costs of collecting the delinquent Referral Fees, API Fees, and Technology Fees, including Womply's attorneys' fees and costs in connection with this action; and
- f. Any other relief the Court deems just and proper.

Dated this 24th day of January, 2023.

Respectfully submitted,

Of Counsel:

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EXHIBIT 1

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August 5, 2022

VIA EMAIL

The Hon. James E. Clyburn
(c/o Derek Collins (Derek.Collins@mail.house.gov)
Chairman
Select Subcommittee on the Coronavirus Crisis
House of Representatives
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

As you know, Holland & Knight LLP represents Benworth Capital Partners, LLC ("**Benworth**") in connection with your April 26, 2022 request for information (the "**April RFI**") and your July 1, 2022 request for information (the "**July RFI**"). As stated therein, the April RFI and the July RFI relate to a Select Subcommittee investigation into potential waste, fraud, and abuse in Paycheck Protection Program ("**PPP**") loans facilitated by financial technology ("**FinTech**") companies.

A. Information Requests

Below we respond to the questions raised in the July RFI. For ease of reference, we state your questions followed by our responses.

1. Please explain the Benworth Capital (Benworth) process for identifying ineligible applicants and preventing fraud related to PPP loan applications received from Womply, including detailed descriptions of any programs enacted to provide oversight of the services provided by Womply and the names and titles of the staff tasked with overseeing those programs.

Benworth's Response:

We start by providing important context and background information related to Benworth, its history and its relationship with Oto Analytics, Inc. ("**Womply**"). This will assist in painting a more complete and accurate picture of Benworth's connection to your investigation.

Established in 2008, Benworth is a minority owned licensed mortgage lender/servicer in the state of Florida. Benworth was approved as a PPP lender on April 21, 2020 for the second round of PPP lending authorized by Congress. While Benworth had been on the lending business for years, PPP was Benworth's first experience with SBA lending and regulations.

Benworth and Womply began their business relationship in or around February 2021, a few months before PPP ended in May 2021. Womply had developed *Fast Lane*, an online platform for the completion and filing of PPP applications. *Fast Lane* was designed for PPP applications from "non-employer businesses" (e.g., house contractors, truckers, real estate agents, cleaners, etc.). Benworth is a mission-based lender that serves these exact types of borrowers, borrowers who have less access to traditional bank lending. And after months of isolating and practicing social distancing due to COVID-19, these borrowers desperately needed PPP relief funds by early 2021 to stay afloat. Benworth saw *Fast Lane* as a valuable tool to help its customer base and allow the faster processing of PPP loans while ferreting out unqualified borrowers and fraudsters.

Through *Fast Lane*, applicants submitted to Womply information and documents required under PPP and other applicable laws and regulations. A key service Womply offered was verifying—on the basis of such information and documents—the applicant's eligibility for a PPP loan. *Fast Lane* also had technological controls during the application process to, among other things, validate the applicant's: (i) identity, (ii) authenticity and type of documents submitted, (iii) calculations for the PPP loan amount, and (iv) bank account information. These controls were aimed at preventing fraud related to identity theft, using fake documents, or the same person obtaining multiple PPP loans. Womply's controls were supported by the services of reputable technology firms like LexisNexis, DocuSign, Plaid and Persona. A primary reason why Benworth contracted with Womply was *Fast Lane* and its ability to identify ineligible applicants and stop fraud.

Benworth was not prohibited from relying on Womply for eligibility verification and fraud prevention. But as the lender of record, Benworth did oversee Womply's services. It was not feasible under the time-sensitive circumstances to have written policies and procedures specific to PPP applications referred by Womply.¹ Benworth, after all, started working with Womply when PPP was an ongoing program that was soon ending. Benworth was reviewing tens of thousands of PPP applications per week, and SBA officials were encouraging lenders to process PPP applications faster. The SBA's own management later admitted that the "focus had to be on providing financial assistance as quickly as possible to respond to the crisis rather than carefully reviewing PPP loans."² In this fast-paced, time-sensitive environment, it was not possible to embark on the time-consuming process necessary to create written policies and procedures.

¹ Benworth did have an "Anti-Money Laundering Program – Suspicious Activity Reporting Policy – Know Your Client/Customer (KYC) Policy" manual from before the PPP for its non-PPP business. Although not specific to the PPP applications referred by Womply, Benworth personnel relied on this manual for general guidance on fraud and how to detect it.

² U.S. SMALL BUS. ADMIN.'S OFFICE OF INSPECTOR GEN., SBA'S HANDLING OF POTENTIALLY FRAUDULENT PAYCHECK PROTECTION PROGRAM LOANS (Report 22-13) app. C (2022) [hereinafter the "SBA-OIG Report"].

In addition, the PPP rules regarding what constituted fraud and the amount of due diligence expected from lenders were not clear. On the one hand, PPP regulations required lenders to follow applicable Bank Secrecy Act (“BSA”) requirements to detect illegal activity like fraud.³ On the other hand and because “[s]peed became the highest priority,”⁴ PPP regulations told lenders they could rely on self-certifications and attestations made by the applicants regarding their eligibility and the accuracy of their documents.⁵ And if they relied in “good faith,” lenders were given a safe harbor against an “enforcement action” and “any penalties relating to loan origination or forgiveness” of PPP loans.⁶ This meant that lenders like Benworth were largely permitted to take the applicant’s word as true as to his or her PPP application. This is different from the type of due diligence required under the BSA, which involves some independent verification of an applicant’s information and documents.⁷ As the SBA’s Inspector General wrote in an official report, the “SBA did not provide lenders specific and sufficient guidance to effectively identify, track, address, and resolve potentially fraudulent PPP loans.”⁸ As a result, lenders “were faced with uncertainty on how to resolve issues they were uncovering.”⁹ This made the adoption of written policies and procedures even more challenging.

While it did not have a written program, Benworth did exercise a more than reasonable degree of control and review over Womply’s services. Benworth never worked with Womply before. Thus, for the first five weeks of the relationship, Benworth conducted manual reviews of every application package (including PPP forms and supporting documents) referred by Womply through *Fast Lane*. There was a short set of written instructions in an internal PPP guidance document accessible to Benworth’s employees, which specifically instructed them to review the applicants’ tax documents for possible fraud. The manual reviews were done by Benworth employees who received training on PPP requirements and BSA compliance.

During the approximately four months when they worked together, Benworth communicated regularly with Womply to discuss possible flaws in Womply’s controls and other related matters. Many issues flagged by Benworth contributed to actual improvements in Womply’s platform (e.g., after Benworth reported application packages containing the supporting documents of other applicants, Womply changed its provider of KYC data collection services). In most exchanges, Womply accommodated Benworth

³ 86 Fed. Reg. 3692, 3708 (Jan. 14, 2021) [hereinafter “**First Draw PPP IFR**”]; 86 Fed. Reg. 3712, 3721 (Jan. 14, 2021) [hereinafter “**Second Draw PPP IFR**”].

⁴ SBA-OIG Report, *supra* note 2 at 2.

⁵ First Draw PPP IFR, *supra* note 3, at 3708; Second Draw PPP IFR, *supra* note 3, at 3721.

⁶ *Id.*

⁷ To add even more confusion, there was the fact that the U.S. Department of the Treasury was involved in the drafting and promulgation of these PPP rules. One of Treasury’s bureaus is the Financial Crimes Enforcement Network (“FinCEN”), which has played a pivotal role in the design of the current BSA regulations and is probably one of their most important interpreters.

⁸ SBA-OIG Report, *supra* note 2 at 8.

⁹ *Id.* at 10.

and provided assurances it would fix the issues Benworth spotted. As Womply's controls improved, Benworth went from manually reviewing every application package to reviewing a sample size (first one out of five packages, then one out of ten, and so on). In total, Benworth personnel conducted manual reviews of over 100,000 application packages received from Womply, one third of the total loans Womply sent to Benworth.¹⁰

In the final weeks of PPP, Benworth discovered that Womply was not providing Benworth with the applicants' supporting documents in many of the packages being submitted. Around this time, Benworth also started receiving complaints—and even some subpoenas—relating to loans referred by Womply (which Benworth investigated, leading Benworth to report to the SBA and to the Financial Crimes Enforcement Network approximately 4,000 potentially suspicious PPP loans.). The relationship with Womply changed at that moment. There were many discussions and disagreements about Womply's performance. Benworth mentioned discontinuing its work with Womply. Simultaneously, a dispute relating to PPP fees arose between Benworth and Womply. And around July 2021, Womply terminated its agreements with Benworth and stopped providing services (Womply thus terminated Benworth's access to *Fast Lane*, where PPP forms and supporting documents were located).

Within a short period of time, Womply became Benworth's top source for PPP referrals. Consequently, from the very beginning, a lot of people at Benworth were involved in the Benworth and Womply relationship. These included the top three officers involved in PPP operations (Bernardo Navarro – President; Toya de la Cruz – PPP Operations Manager; and Mildred J. Avila – Comptroller), other Benworth employees, and more than 30 temporary Benworth employees hired to work on PPP applications.

In conclusion, Womply handled eligibility verification and fraud prevention in connection with hundreds of thousands of PPP applications referred to Benworth by Womply. Due to time constraints and unclear PPP rules, Benworth could not adopt a written program specific to Womply's PPP applications. But in practice, Benworth spent significant time, energy, and resources monitoring Womply's performance. This included manual review by Benworth personnel of a large number of application packages and repeated discussions with Womply's top officers. In the frightening, urgent, and uncertain COVID-19 environment, Benworth's actions were reasonable, appropriate, and complied with applicable laws and regulations.

2. In what way and to what extent did Benworth rely on the automatic checks, Know Your Customer (KYC) management, bank and tax document analysis, and anti-fraud measures undertaken by Womply when determining whether Benworth would submit a PPP loan application to the Small Business Administration (SBA) for approval and funding?

Benworth's Response:

¹⁰ For further details, see *infra* our responses to questions 3 and 3.a.

As stated in our response to information request 1 above, a primary reason Benworth worked with Womply was because Womply's services included identifying ineligible applicants and preventing fraud. To timely provide these services in connection with hundreds of thousands of PPP applications, Womply relied on automated checks and other technological tools supported by reputable technology firms (e.g., LexisNexis, DocuSign, Plaid, Persona, etc.). Womply's *Fast Lane* platform included a number of controls during the application process, designed to, among other things, validate the applicant's identity, the authenticity and type of documents submitted, the applicant's calculations for the PPP loan amount, and the applicant's bank account information.

We also explained above how Benworth personnel conducted manual reviews of over 100,000 (about one-third of the total) application packages received from Womply. These reviews were done by employees trained in PPP requirements and BSA compliance (including fraud prevention). Obviously, Benworth did not duplicate Womply's technological controls—a primary purpose of working with Womply was to access and rely on its technological tools. But in the manual reviews, Benworth personnel were instructed to—and did—review the whole application package to determine if Womply's technological controls were working well. For instance, Benworth personnel reviewed completion reports for identity-verification checks to compare the pictures in the applicants' selfies and their government-issued IDs. Similarly, following specific instructions, Benworth personnel conducted independent review of the applicants' tax records to confirm that they appeared legitimate, were the type permitted under PPP regulations, and supported the applicants' loan amount calculations.

Benworth's manual reviews uncovered many incomplete or suspicious PPP applications that it then rejected. And Benworth likewise confirmed no red flags in many PPP applications received from Womply. As discussed above, Benworth was in constant communication with Womply to discuss questions or flaws connected to Womply's controls and to provide other important feedback. Benworth grew concerned when complaints rose in the final weeks of PPP. While the number of complaints received and investigated by Benworth was under 2% of the total PPP loans referred by Womply, Benworth took these complaints seriously and sought to remedy all problems.¹¹ To date, Benworth has flagged and reported to government authorities roughly 4,000 potentially suspicious PPP loans.

Benworth was not prohibited from utilizing Womply to check eligibility verification and spot fraud. Benworth also exercised reasonable, diligent oversight of Womply's services. As SBA officials have acknowledged, speed was *the* priority and fraud prevention rules were unclear.¹² In other words, Benworth acted prudently and responsibly in very uncertain times in the midst of an economic calamity for millions of Americans.

¹¹ This percentage is similar to the total percentage of loans identified by the SBA's OIG as being potentially fraudulent loans identified. SBA-OIG Report, *supra* note 2 at app. C ("Although the volume of [complaints] may have been unprecedented, the volume of PPP loans made by the SBA was also unprecedented").

¹² See *supra* notes 2, 8-9.

3. How many PPP loan applications did Benworth receive from Womply for onward submission to the SBA?

Benworth's Response:

Among other items, Womply's *Fast Lane* platform stored PPP applications rejected by Benworth in which the SBA never assigned a loan number. As advised in response to information request 1, Womply terminated Benworth's access to *Fast Lane* around July 2021. Benworth did not have copies of the PPP applications without SBA numbers when this occurred. But to the best of its recollection, Benworth estimates that the total number of such applications ranged from 85,000 to 100,000. The PPP applications without SBA numbers are part of the total number of applications received from Womply, and thus our response is based on our best estimate (not an exact count).

Taking into account this estimate plus PPP applications that were submitted to the SBA and other rejected applications which had assigned SBA numbers, Benworth estimates that it received a total of 423,782 to 438,782 PPP applications from Womply.

- a. How many of these loan applications received a manual review by employees of Benworth to verify eligibility or to identify fraud?

Benworth's Response:

The exact number of PPP applications that received a manual review to verify eligibility or to identify fraud is hard to estimate.

First, Benworth did not track PPP applications that were reviewed before funding and then approved. These applications were part of the larger group of approved applications that Benworth tracked, but which also included PPP applications approved without review.

Second, while there are records of PPP applications that were reviewed before funding but then rejected, such records (as maintained in the ordinary course of business) are not organized to identify which were rejected for ineligibility, possible fraud, or for being incomplete. These records include the 85,000 to 100,000 PPP applications without SBA numbers stored only in *Fast Lane*, plus approximately 33,000 other PPP applications that do have SBA numbers.

Third, Benworth reviewed 4,351 PPP applications after they were approved and funded.

- b. How many of these loan applications were rejected, denied, or not submitted to the SBA at the direction of Benworth employees and due to suspicion of fraud or ineligibility? Please exclude incomplete applications from this total.

Benworth's Response:

As explained above, records of PPP applications Benworth reviewed before funding but then rejected are not organized to identify which were rejected for ineligibility, possible fraud, or for being incomplete. This concerns both the records in Benworth's possession for approximately 33,000 PPP applications with SBA numbers, as well as the records of 85,000 to 100,000 PPP applications without SBA numbers stored only in *Fast Lane*.

4. For the below questions, unless otherwise instructed, please provide answers corresponding to the 2021 fiscal year. If necessary to fully answer the below questions, please include information related to parent, holding, and other related entities.

- a. What was the processing fee income generated from Benworth's participation in the PPP?

Benworth's Response:

In the 2021 fiscal year, Benworth's income corresponding to PPP-loan fees was \$361,773,377.50.

- b. What was Benworth's total revenue from operations? How did this compare to the 2020 fiscal year?

Benworth's Response:

In the 2021 fiscal year, Benworth's total revenue from operations was \$402,889,450.99. In the 2020 fiscal year, Benworth's total revenue from operations was \$4,024,186.

- c. What amount of Benworth's total revenue from operations was a result of Benworth's participation in the PPP?

Benworth's Response:

In the 2021 fiscal year, \$399,791,746.96 out of a total revenue from operations of \$402,889,450.99 resulted from Benworth's participation in the PPP.

- d. What was Benworth's net operating income before taxes? How did this compare to the 2020 fiscal year?

Benworth's Response:

[REDACTED]

- e. What were Benworth's total operating expenses, including general administrative expenses and salaries/wages? How did this compare to the 2020 fiscal year?

Benworth's Response:

[REDACTED]

- f. What were Benworth's operating expenses as a percentage of total revenues? How did this compare to the 2020 fiscal year?

Benworth's Response:

[REDACTED]

- g. What was the dollar value of employee and management bonus expense incurred by Benworth? How did this compare to the 2020 fiscal year?

Benworth's Response:

In the 2021 fiscal year, Benworth incurred \$5,255,844.52 in employee and management bonuses. In the 2020 fiscal year, Benworth incurred \$133,218.75 in employee and management bonuses.

5. If necessary to fully answer the below questions, please include information related to relevant parent, holding, and other related entities.
- a. How many total employees did Benworth have in 2020 and in 2021?

Benworth's Response:

In 2020, Benworth had 31 employees. In 2021, Benworth had 52 employees.

- b. How many Benworth employees were dedicated full time and exclusively to AML, BSA, eligibility verification, or fraud compliance, including those employed full time to prevent, detect, or investigate potential fraud, broken up month by month, from January 2019 to October 2021?

Benworth's Response:

As kept in the ordinary course of business, Benworth's records are not organized to identify the information requested. From these records however, we infer that, per month, Benworth had approximately 6 employees exclusively dedicated to compliance in 2019, 18 in 2020, and 24 in 2021.

- c. What were the total budgets for, and amounts allocated to, AML, BSA, eligibility verification, and fraud compliance at Benworth in 2019, 2020, and 2021, excluding amounts budgeted or allocated to third party contractors? Please include a breakdown of these expenses.

Benworth's Response:

As kept in the ordinary course of business, Benworth's records are not organized allowing identification of the information requested. If third parties' services are excluded, Benworth's main compliance resource and expense were its employees. Benworth allocated \$473,695.25 to payroll expenses in 2019, \$740,553.98 in 2020, and \$1,254,169.15 in 2021. Many Benworth employees performed eligibility verification or compliance work during PPP but not on a full-time basis. Salaries and related payments to these employees would certainly be expenses allocated to compliance, but just partially. And there is no information we have identified to determine what portion corresponded to eligibility verification or compliance work (as opposed to other, non-compliance work).

6. What was the total dollar amount of the disbursements, payouts, or other payments that were made to Benworth and its parent/holding company shareholders, executives, or owners in 2020, 2021, and 2022?

Benworth's Response:

Benworth President Bernardo Navarro is the sole shareholder of the company. As such, all profits ultimately flow to him. Please note, however, that because of the dispute with Womply concerning PPP fees, a major portion of Benworth's PPP income is under discussion and may ultimately change depending on the outcome of such dispute.

B. Documents

Pursuant to the April RFI, we issued a document production to you on May 10, 2022. That production contained documents Bates stamped BWSSCCResp0000001 to BWSSCCResp0000033. And now pursuant to the July RFI, we hereby produce documents Bates stamped BWSSCCResp0000033 to BWSSCCResp0000052. This production includes all records in Benworth's possession, custody, or control we have been able to identify concerning document request 3 in the July RFI. Please note that we have not waived any applicable privileges. As such, any production or disclosure of privileged materials is inadvertent. And on behalf of Benworth, we hereby certify that (i) a diligent search has been completed of all documents in Benworth's possession, custody, or control that reasonably could contain responsive material; and (ii) all responsive documents located during the search have been produced to the Select Subcommittee.

As to document request 1 in the July RFI, Benworth is not in possession, custody, or control of responsive records.

Regarding document request 2 in the July RFI, when we spoke with your staff on July 22nd, we agreed that for the time being, we will provide the following information in lieu of responsive records:

- a. As stated in response to information requests 3 and 3.a above, we estimate that Womply referred a total of 423,782 to 438,782 PPP applications to Benworth, and we estimate that Benworth personnel conducted manual reviews of at least 122,351 of these applications to, among other things, verify eligibility or to identify fraud. Further, we estimate that at least 118,000 of the PPP applications in question were reviewed before the loan was funded, and 4,351 of them after the loan was funded.
- b. As advised in our responses to information requests 1 and 2 above, all PPP applications referred by Womply were subject to manual review before funding during the first five weeks of the relationship. When Benworth began reviewing only a sample size, the PPP applications subject to manual review were randomly selected. Lastly, the PPP applications that were reviewed post-funding were selected after Benworth received either a complaint or subpoena in relation to them.
- c. We also explained in our responses to information requests 1 and 2 how these PPP applications were reviewed. Benworth personnel was instructed to review the whole application package (including PPP forms and supporting documents) received from Womply to ensure completion, eligibility, and that the applicant passed Womply's fraud-prevention controls, among others.

If you have any questions or issues related to this matter, please contact us.

Sincerely yours,



Wifredo A. Ferrer

cc: Brandon White (Brandon.White@mail.house.gov)
Jennifer Gaspar (Jennifer.Gaspar@mail.house.gov)
Molly Claflin (Molly.Claflin@mail.house.gov)
Laura O'Neil (Laura.O'Neill@mail.house.gov)
Matthew Ellison (Matthew.Ellison@mail.house.gov)
Michael E. Hantman (michael.hantman@hklaw.com)
Marcelo Ovejero (marcelo.ovejero@hklaw.com)
Denise Perlich (denise.perlich@hklaw.com)

EXHIBIT 2



Amended and Restated PPP Loan Referral Agreement

This Amended and Restated PPP Loan Referral Agreement (the "**Agreement**") is made and entered into on April 14th, 2021 (the "**Amendment Effective Date**") by and between Oto Analytics, Inc. d/b/a Womply ("**Womply**") and Benworth Capital Partners, LLC (the "**Lender**"). In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, Womply and Lender hereby agree as follows:

WHEREAS, Lender desires to engage in the origination, marketing, underwriting, and funding of loans, as well as the servicing, management and liquidation of the subsequently resulting loan portfolios, funded and created under the U.S. Small Business Administration ("**SBA**") Paycheck Protection Program (the "**PPP**");

WHEREAS, Lender has the ability to independently evaluate, process, close, service, liquidate, and litigate commercial loans;

WHEREAS, Lender and Womply desire to establish an independent contractor relationship whereby Womply provides referrals to Lender in connection with potential loan applicants seeking loans under the PPP;

WHEREAS, Lender and Womply specifically acknowledge that 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; and

WHEREAS, Lender and Womply entered into that certain PPP Loan Referral Agreement dated February 25th, 2021 (the "**Original Agreement**") but have since agreed to amend the economics thereof to provide an early-payment discount to Lender.

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 Lender 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 Lender by multiple referring parties. Womply will be the party paid if they were the first to submit a complete package to Lender for the requested loan.

1.2. WOMPLY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR, THE ACCURACY, LAWFULNESS, OR COMPLETENESS OF ANY INFORMATION ACCOMPANYING A REFERRAL. FOR THE AVOIDANCE OF DOUBT, WOMPLY DOES NOT ENDORSE ANY REFERRAL. LENDER ASSUMES SOLE RESPONSIBILITY REGARDING WHETHER OR NOT ANY REFERRAL IS OR SHOULD BE SENT TO THE SBA FOR REVIEW.

1.3. Womply is not 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 Lender in respect of Referred Loans (defined below) in Lender's capacity as a "Lender" for such Referred Loans under SBA Regulations (as may be amended, the "**Lender Fees**"). As of the Amendment Effective Date, the current maximum Lender Fees under the SBA Regulations are:

- For loans of not more than \$50,000, an amount equal to the lesser of 50% of the loan amount or \$2,500;
- 5% of the loan amount for loans more than \$50,000 but not more than \$350,000; and
- 3% of the loan amount for loans more than \$350,000 and less than or equal to \$2,000,000.

2.2. In consideration of Womply providing Lender with Referrals, Lender 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 Lender under the PPP resulting from a Referral (such loan a "**Referred Loan**").

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Referral Fee Amount	1.00% for each Referred Loan
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2.3. Within thirty (30) days of Lender receiving the Lender Fee from the SBA, Lender will pay Womply all associated Referral Fees for each applicable Referred Loan. Womply shall return any Referral Fees paid in the event that the SBA or other governmental agency requires Lender to return the Lender 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 Lender.

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 of the Original Agreement (as defined therein) (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 6.

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

4.3. Upon Lender's receipt of a Notice of Termination, Lender may request from Womply, and Womply shall reasonably provide to Lender, a plan for transmitting to Lender electronic copies of loan files in its possession that relate to the Referred Loans, to the extent not otherwise in the possession of Lender. 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 Lender 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: 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 Lender'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 Lender 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

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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 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.

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) a material violation of any law, rule, or regulation applicable to the Indemnifying Party's performance obligations herein; or (ii) 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 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 LENDER'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, this Agreement shall control with respect to any Referred Loan unless the other contract or agreement specifically states that it supersedes this Agreement.

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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 Lender 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, including without limitation the Original Agreement. 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: CPC
Name: _____
Title: _____

Lender

By: [Signature]
Name: Bernardo Navarro
Title: President

[Signature]

EXHIBIT 3

Womply Developer Order Form

Client:	Benworth Capital Partners, LLC
Effective Date:	April 14 th , 2021
API Access End Date:	The earlier of twelve (12) months from Effective Date or when this Order or the Agreement is terminated.

API Package	Payments
Tax Documents Business Fraud Analytics Bank Data Identity Account Verification PPP Portfolio Management System	\$250 per funded PPP loan sourced through the Services (the " API Fee ") plus the Technology Fee set forth in Section 2 below.

This Amended and Restated 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, (iii) the Womply Master Developer Agreement located at <http://www.womply.com/mda> (the "**MDA**"), and (iv) the Additional Terms and Conditions set forth below. Unless set forth otherwise, undefined capitalized terms are defined in the MDA or Amended and Restated PPP Loan Referral Agreement between the Parties (the "**Referral Agreement**"). To the extent there is a conflict between the Order Form Terms and the MDA or the Referral Agreement, the Order Form Terms shall take precedence. This Agreement supersedes all prior communications and writings and constitutes the entire agreement between the parties with respect to the Services, including without limitation the Womply Developer Order Form agreement between the parties dated February 25th, 2021.

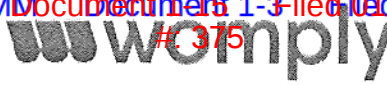
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Womply:

By: CPC
 Name: _____
 Title: _____

Client:

By: Bernardo Navarro
 Name: Bernardo Navarro
 Title: President



Additional Terms and Conditions

1. Disclaimers.

1.1. WOMPLY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR, THE ACCURACY, LAWFULNESS, OR COMPLETENESS OF ANY INFORMATION ACCOMPANYING A REFERRAL (I.E., OUTPUT MADE AVAILABLE VIA THE SERVICES). FOR THE AVOIDANCE OF DOUBT, WOMPLY DOES NOT ENDORSE ANY REFERRAL. CLIENT ASSUMES SOLE RESPONSIBILITY REGARDING WHETHER OR NOT ANY REFERRAL SHOULD BE SENT TO THE SBA FOR REVIEW.

1.2. The Services includes integrations with and/or links to certain third-party service providers (including, without limitation, Plaid, Docusign, LexisNexis, Teslar, Inscribe, Oculous, 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.

1.3. Womply is not a lender or lender service provider as defined by the SBA.

2. Technology Fee.

2.1. Client shall pay Womply the technology fees described below for each loan originated by Client under the PPP resulting from a Referral (which for purposes of clarity, the max percentage applies to Referred Loans funded prior to achieving the Referred Loan Volume) ("**Referred Loan**"):

2.1.1. The percentage owed for any Referred Loan will be determined based on the Referred Loan Tier for that specific loan ("**Technology Fees**").

2.1.2. In the case where the Lender Processing Fee for a given Referred Loan is two-hundred and fifty dollars (\$250) or less:

2.1.2.1. There will be no Technology Fee due from the Client to Womply. (For avoidance of doubt, the API Fee set forth above will be owed regardless of the Lender Processing Fee.)

2.1.2.2. Such Referred Loans will be disregarded when calculating the Referred Loan Tiers.

2.1.3. Referred Loans will be assigned to a Referred Loan Tier based on the date each loan is approved by the SBA.

Tier	Referred Loan Tiers	Technology Fee Percentage
1	1 through 30,000 Referred Loans	50% of the Lender Processing Fee for each Referred Loan
2	30,001 through 45,000 Referred Loans	60% of the Lender Processing Fee for each Referred Loan
3	45,001 through 60,000 Referred Loans	70% of the Lender Processing Fee for each Referred Loan
4	60,001 through 300,000 Referred Loans	80% of the Lender Processing Fee for each Referred Loan
5	Greater than 300,000 Referred Loans	70% of the Lender Processing Fee for each Referred Loan

2.2. The Technology Fee payable to Womply for any Referred Loan shall be reduced by any Referral Fee paid to Womply for the same Referred Loan. By way of example, if a Referred Loan from Tier 1 above 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 calculated as follows:



Tier 1 Technology Fee = (Tier 1 Technology Fee Percentage X Lender Processing Fee) minus Referral Fee (as determined by the Referral Agreement):

$$\$750 = (50\% \times \$2,500) - \$500$$

2.3. Within fifteen (15) days of Client receiving the Lender Processing Fee from 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.

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.

2.5. Subject to having sufficient Referred Loans with approved SBA Loan numbers ("SBA Approved Loans"), Client shall fund no less than five hundred million dollars (\$500,000,000) of SBA Approved Loans per calendar week ("Minimum Weekly Funding Commitment"), and if Client fails to achieve the Minimum Weekly Funding Commitment in any such week, Client will pay Womply an under-funding fee of ten percent (10%) times the funding amount below the Minimum Weekly Funding Commitment for each applicable week Client falls below the Minimum Weekly Funding Commitment (the "Under-Funding Fee"). By way of example, if Client funds \$475,000,000 in a given calendar week, then the Under-Funding Fee will equal \$25,000,000 (calculated as the \$25,000,000 below the Minimum Weekly Funding Commitment times 10%).

Notwithstanding, client shall not liable for the Under-Funding fee solely to the extent its failure to achieve the Minimum Weekly Funding Fee results from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage or interruption of money supply from Lender's bank or the Federal Reserve Board of San Francisco, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest. In the event of such an occurrence, Client shall make a good faith effort to fulfil its Minimum Weekly Funding Commitment."

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 its obligations under this Agreement.

4. Miscellaneous. 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, the SBA Regulations shall control. 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.

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EXHIBIT 4



[SOLUTIONS](#) [PRICING](#) [RESOURCES](#) [COMPANY](#) [APPS SIGN IN](#)

PPP FAST LANE
SIGN IN



[Terms of Service](#)

[Privacy Policy](#)

[Copyright Dispute Policy](#)

[Master Developer
Agreement](#)

[Referral Terms](#)

[Storefront Terms](#)

[Offers Terms](#)

[Bills Terms](#)

[Business Loan Assistance
Terms](#)

[PPP Loan Assistance
Terms](#)

[HIPAA Business Associate
Agreement](#)

[Affiliate Terms and
Conditions](#)

[Data Access Agreement](#)

Master Developer Agreement

This Master Developer Agreement (the “Agreement”) is entered into on the Order Effective Date (the “Effective Date”) between Oto Analytics, Inc. (“Womply”) and the Account listed on the Order Form (the “Client”).

The parties hereby agree as follows:

1. ACCESS RIGHTS; RESTRICTIONS

- 1.1. **Access.** Subject to the Client’s compliance with the terms and conditions of this Agreement, Womply hereby agrees that during the Term (as defined below) of this Agreement, the Client has the non-exclusive right to: (i) internally use the package of application programming interface materials provided by Womply (the “API Package”) solely as necessary to make an application owned and operated by the Client (the “Client Application”) interoperate with the Womply service described on womply.com (collectively with the

API Package, the “Service”), (ii) use the Service in 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 or for your internal business purposes. Client’s use of the Service and Output shall comply with the terms and conditions of this Agreement, Womply’s [Privacy Policy](#), applicable documentation, and all other Womply-provided written instructions.

- **1.2. Restrictions.** Unless Womply specifically agrees in writing, Client will not, and will use commercially reasonable efforts to make sure a third party does 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, (ii) any agreements between Client and End Users, and (iii) all applicable laws and regulations.

- 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 which includes but is not limited to the API Package 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. PAYMENTS

Client will pay Womply for the Service as set forth in the Order Form provided to the

Client (the "Payments"). Payments must be made within fifteen (15) days from the date of Womply's invoice. 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. The Client will be responsible for all (i) taxes associated with Service other than taxes based on Womply's net income and (ii) Womply's costs of collection in the event of the Client's delinquent payment. All Payments made are non-refundable, non-cancellable, and not subject to set-off.

3. **TERM; TERMINATION**

- 3.1. **Term.** This Agreement will have a term that begins on the Effective Date and continues through to the API Access End Date on the Order Form (the "Initial Term"). After the Initial Term, this Agreement will automatically renew for successive one (1) year Terms (each, a "Renewal Term") unless either party provides the other party sixty (60) days advance written notice of non-renewal prior to the end of the Initial Term or then-current Renewal Term (as applicable). Together, the Initial Term and Renewal Terms will be referred to as the "Term." Womply may revise its rates for the following Renewal Term by providing Client ninety (90) days written notice prior to the end of the then-current Initial Term or Renewal Term.
- 3.2. **Termination.** Either party may terminate this Agreement in the event the other party materially breaches this Agreement and fails to cure such breach within ten (10) days from receipt of written notice

thereof. Womply may terminate this Agreement at any time for any reason or no reason by providing five (5) days' written notice to Client. In addition, Womply may immediately suspend the Services in the event it determines or believes that (i) there is unauthorized access to the Service via Client's account, (ii) continued provision of the Service may do material harm to Womply or its networks or systems or reputation or subject Womply to liability or (iii) Client materially breached Section 1 or 2 of this Agreement. Upon termination of this Agreement, all rights granted herein to Client will terminate and Client will make no further use of the Services or API Package (copies of which will be immediately returned to Womply or destroyed). But for Section 1.1, all provisions of this Agreement will remain in force and effect in the event of this Agreement's termination.

4. **CONFIDENTIALITY**

During the term of this Agreement, Womply may provide Client with confidential and/or proprietary materials and information ("Confidential Information"). All materials and information provided by Womply to Client and identified at the time of disclosure as "Confidential" or bearing a similar legend, and all other information that Client reasonably should have known is the Confidential Information of Womply, will be considered Confidential Information; for the avoidance of doubt, the Service, API Package, all pricing information and

terms of this Agreement, are Confidential Information. Client will maintain the confidentiality of the Confidential Information and will not disclose such information to any third-party without the prior written consent of Womply. Client will only use the Confidential Information internally for the purposes contemplated hereunder. The obligations in this Section 4 will not apply to any information that: (i) is made generally available to the public without breach of this Agreement, (ii) is developed by the Client independently from the Confidential Information, (iii) is disclosed to Client by a third-party without restriction, or (iv) was in Client's lawful possession prior to the disclosure to Client and was not obtained by Client either directly or indirectly from Womply. Client may disclose Confidential Information as required by law or court order; provided that, Client provides Womply with prompt written notice thereof and uses its best efforts to limit disclosure. At any time, upon Womply's request, Client will return to Womply all Confidential Information in its possession, including, without limitation, all copies and extracts thereof. Notwithstanding the foregoing, Client may disclose Confidential Information to any third-party to the limited extent necessary to exercise its rights, or perform its obligations, under this Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Confidential Information as in this Agreement. With respect to data provided by Client to Womply hereunder, Womply will comply with the obligations set forth in Womply's [Privacy Policy](#), and

Womply will not be obligated by any previously executed nondisclosure agreement between Womply and Client.

5. **INDEMNITY**

The Client will defend, indemnify and hold Womply and its suppliers, agents, representatives and affiliates harmless from and against all third-party claims, actions, proceedings, damages, losses, judgments, settlements, costs and expenses (including attorneys' fees arising from or in connection with (i) Client breach of any laws or regulations (including with respect to privacy), (ii) Client's use of the Services and Output, or (iii) Client's violation of any agreements it has with any End User.

6. **WARRANTY; DISCLAIMER**

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. WOMPLY DOES NOT MAKE ANY WARRANTY AS TO THE OUTPUT THAT MAY BE OBTAINED FROM USE OF THE SERVICE.

7. **LIMITATIONS OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER WOMPLY NOR ITS AFFILIATES, SUPPLIERS, LICENSORS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY: (A)

INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (B) LOSS, ERROR, OR INTERRUPTION OF USE OR DATA (IN EACH CASE, WHETHER DIRECT OR INDIRECT), OR (C) COST OF COVER OR LOSS OF BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), IN EACH CASE EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, WOMPLY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO WOMPLY DURING THE SIX (6) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO LIABILITY (PROVIDED THAT, IF NO FEES ARE PAID OR PAYABLE, SUCH AMOUNTS WILL BE LIMITED TO ONE HUNDRED DOLLARS (US\$100)).

8. **MISCELLANEOUS**

Womply reserves the right to amend this Agreement at any time its sole discretion. In the event of any such amendment, Womply will notify you by email and/or place a notice on Womply's site located at <https://www.womply.com/legal/mda/>. If Client does not agree with such changes, Client may stop using the Service at any time. Client's continued use of the Service in any way means that Client agrees to all of the changes to this Agreement. Except for changes by Womply as described in the foregoing, no other amendment or modification of this Agreement will be effective unless in writing and signed by both Womply and Client. If any provision of this Agreement

is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by a party except with the other party's prior written consent; but, a party may transfer and assign its rights and obligations under this Agreement without consent to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which this Agreement relates. If such a transfer or assignment is made in favor of a direct competitor with the other party, then the other party may terminate this Agreement upon written notice. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Any notices in connection with this Agreement will be in writing and sent by first class US mail, confirmed facsimile or major commercial rapid delivery courier service to the address specified below (or such other address as may be properly specified by written notice hereunder). Email notice will be permitted by Womply if sent to the applicable account email address. This Agreement will be governed by the laws of the State of California,

without regard to the conflict of law provisions thereof. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court), any dispute arising under this Agreement will be finally settled in accordance with the Streamlined Arbitration Rules of JAMS (formerly operating as Judicial Arbitration and Mediation Service, Inc.) by a single arbitrator appointed in accordance with such Rules. The arbitration will take place in San Francisco, California, USA, in the English language and the arbitral decision may be enforced in any court. With respect to all disputes arising in relation to this Agreement, but subject to the preceding arbitration provision, the parties consent to exclusive jurisdiction and venue in the state and Federal courts located in San Francisco, California.



Solutions

Built for business

REPUTATION

INSIGHTS

CUSTOMER MANAGEMENT

MARKETING

BILLS

PAY

STOREFRONT

Company

We stand for local

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ABOUT

CAREERS

PRESS

CONTACT US

Resources

We're here to help

SMALL BUSINESS ALMANAC

SMALL BUSINESS RESOURCES

BLOG

SMALL BUSINESS DIRECTORY

PPP FAST LANE LOGIN

PPP FAQ

PPP FORGIVENESS RESOURCE CENTER

Partners

Work better together

OUR PROGRAM

RETENTION INTELLIGENCE

INTEGRATIONS

PARTNER BLOG

Industries

Local expertise

FOOD & BEVERAGE

AUTO SERVICES

ENTREPRENEUR

SEE ALL

Developers

Supercharge your business and apps

USE CASES

API PRODUCTS

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EXHIBIT 5



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 6

MARCO RUBIO
FLORIDA

United States Senate
WASHINGTON, DC 20510-0908

COMMITTEES:
APPROPRIATIONS
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS AND ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

August 26, 2021

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

Dear Administrator Guzman:

I write to request the clarification of guidance issued by the U.S. Small Business Administration (SBA) related to agent fees for Paycheck Protection Program (PPP) loans. I have heard from several Florida lenders that the existing guidance is overly ambiguous in its treatment of fees for PPP loans of less than \$50,000. This ambiguity has created confusion and costly uncertainty between lenders and loan agents, many of whom have provided vital services to sustain local communities, employers, and workers throughout the pandemic.

On December 27, 2020, President Trump signed the *Consolidated Appropriations Act, 2021*, which included the *Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act*. This legislation extended and authorized a second draw of loans from the PPP, a forgivable loan program that I authored and has provided more than 11 million emergency loans worth nearly \$800 billion to struggling small businesses and nonprofits across the country. As part of this PPP reauthorization, Congress recognized the need to prioritize the smallest businesses for relief, and accordingly, increased lenders' compensation significantly for processing PPP loans of not more than \$50,000.

Though Congress made specific changes to lender processing fees for these small-dollar loans, SBA guidance with respect to agent fees for these loans has remained the same. On January 14, 2021, the SBA and U.S. Department of Treasury issued an interim final rule providing guidelines for implementation of the newly amended PPP.¹ The rule established caps on agent fee collections from lenders, set at one percent for loans of \$350,000 or less, 0.5 percent for loans between \$350,000 and \$2 million, and 0.25 percent for loans of \$2 million or greater.

Unlike the lender fees enacted by Congress, the rule does not make any distinction for loans of not more than \$50,000. This potential ambiguity has created confusion between lenders and loan agents in my state, and should be remedied by a clarification from the SBA regarding how such loans should be treated. I ask that you provide this clarification in writing, or through new rulemaking.

¹ <https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00451.pdf>

Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Rubio', with a stylized flourish at the end.

Marco Rubio
U.S. Senator

EXHIBIT 7



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
Susan E. Streich
Director - Office of Credit Risk Management

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

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 8

LOAN SERVICING AGREEMENT

This Loan Servicing Agreement (the "Agreement") is dated May 31, 2021, and is between Benworth Capital Partners PR, a company in formation under the laws of the Commonwealth of Puerto Rico ("SERVICER") and Benworth Capital Partners LLC, a Florida limited liability company (Lender).

1. Scope.

- a. Lender retains SERVICER as Lender's agent to employ commercially reasonable efforts to collect all scheduled payments on various Loans originated by Lender ("Loan") which are evidenced by one or more promissory note(s) ("Note") and secured by one or more deed(s) of trust/mortgages ("Deed of Trust"), including the protection of the security for the Loan. SERVICER shall consult with and follow instructions from Lender on non-routine collection matters.
- b. Lender retains SERVICER as Lender's agent to assist with its portfolio of Paycheck Protection Program loans ("PPP loans"), mainly by assisting with obtaining Forgiveness for said loans, Servicing, administering Guaranteed Purchase, and to provide Fraud monitoring for said loans.

2. Term and Termination. This Agreement shall commence as of the date of this agreement and continue throughout as "SERVICER" receives all necessary documents to service loans and this Agreement executed by all parties.

3. Handling of Funds and Notices. Payments received by SERVICER pursuant to this agreement shall not be commingled with the assets of the SERVICER or used for any transaction other than the transaction for which the funds are received (unless directed by Lender or Lender's agent).

4. SERVICER Reliance of Information and Lender Representations. The undersigned Lender represents that Lender, or its assignees, if any, owns the entire beneficial interest in the Loan. Lender agrees that SERVICER may rely on all prior servicing records and information provided to SERVICER by Lender or by a predecessor loan servicer and that SERVICER has no obligation or duty to research or verify such prior servicing records and information.

5. Authority of SERVICER. Without further authorization, Lender expressly authorizes SERVICER to take any actions set forth in this Agreement including, but not by way of limitation, those necessary to engage in loss mitigation, forbearance agreements, loan modifications, to initiate, conduct and conclude a non-judicial or judicial foreclosure or to exercise, on behalf of Lender, any remedies Lender may have.

whether they are yet to be incurred, upon SERVICER'S demand, Lender shall pay said Contractor fees and costs as directed by SERVICER. SERVICER may produce a copy of this Agreement as evidence of its authority. Should property be located in a city or county in which an ordinance exists where registration fees, inspection fees, etc. exist, Lender understands that Lender is responsible for payment of said fees, either directly by request of SERVICER or reimbursement to SERVICER.

6. Default of Borrower. Upon borrower's default under the Loan Documents and after receiving instructions of Lender, SERVICER, or its designated Contractor (e.g., trustee, substitute trustee, or foreclosure agent) are each authorized by Lender to take any and all reasonable or necessary actions on behalf of Lender to: (1) satisfy or complete any conditions precedent to initiating, processing and concluding a non-judicial or judicial foreclosure, including, but not limited to, taking any actions required or permitted by the Loan Documents or pursuant to State law; and (2) to initiate, process, and conclude a non-judicial foreclosure including, but not limited to, taking any actions required or permitted by the Loan Documents or pursuant to State law. The authority granted by the Lender under this Agreement includes, but is not limited to, SERVICER and a Contractor selected by SERVICER (e.g., trustee, substitute trustee, or foreclosure agent) each of whom is authorized to take all actions on behalf of Lender relating to executing and processing a Notice(s) of Default; a Declaration of Mortgage SERVICER included in the Notice(s) of Default; using a title company or vendor of SERVICER'S choice for recording documents on behalf of Lender, SERVICER or its Contractor; to prepare and record a

Substitution of Trustee, if needed; to order a Trustee's Sale Guarantee or litigation guaranty; to mail "Post-Notice of Default Solicitation Letter" if necessary; to post, publish and take any and all other action regarding a Notice of Foreclosure Sale; to request a bid or postponement information; to send required postponement letters under Lender's or SERVICER'S name; to conduct and/or continue a Foreclosure Sale; to distribute all funds received whether reinstatement, payoff, or trustee sale proceeds.

6. Loan Documents. SERVICER shall retain custody as agent for Lender of the original note, deed of trust, mortgage, and any other document SERVICER feels is necessary to properly service the Loan. Lender is to receive notice of receipt of original documents at time of receipt by SERVICER. On assigned investor loans, the custody of documents shall be agreed upon by all parties.

7. Compensation. For its services, SERVICER shall be paid the following amounts, broken down as follows:

TYPE OF SERVICE	to SERVICER		to Lender
Mortgage Loan Servicing Fee	75% of the differential fee		25% of the differential fee
Mortgage Late Charge (10%)	50%		50%
Mortgage loan preparation and recording of each Request for Notice	\$50.00		0
Mortgage loan Set Up Fee — Should all documentation not be received at the onset or additional work must be performed to set up this file, an additional fee in the amount of "\$75.00-\$150.00" shall be charged to Lender	\$125.00		0
Mortgage Default Interest	If default interest is 25%, 25% If default interest is 18%, 25%		75% 75%
Mortgage Prepayment Penalty	50%		50%
PPP loan forgiveness Fee	\$500.00 per file		0
PPP loan Fraud Monitoring Fees and Guaranteed Purchase	\$50.00 per file		0
PPP loan Servicing	65 bps		0

8. Value of Real Estate Security. Lender further understands and agrees that the security for any Note and Deed of

Trust/Mortgage is directly related to the equity in the security real estate ("Secured Property"). Lender understands that the value or saleability of real estate can change at any time and, therefore, that equity in the security real estate can increase or decrease. Lender hereby releases SERVICER from any liability whatsoever in connection with the determination of the value of the Secured Property.

9. Lender Indemnification of Servicer. Lender agrees to hold harmless, indemnify and defend SERVICER from any and all claims, demands, judgments, actions, and liability [herein collectively "Claims"], including attorney's fees and costs incurred in responding to and/or defending against such Claims, arising from, or relating to in any way, the loan(s) and mortgages(s) which are the subject of this Agreement ("Indemnity").

10. Survival. The provisions of this Agreement relating to indemnity and all provisions relating to SERVICER'S fees, costs, and reimbursements for advances, shall survive the termination of this Agreement.

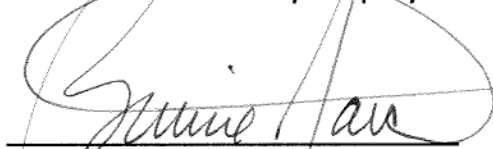
11. Notice. Notices pursuant to this Agreement shall be in writing and may be served by email with confirmation that the e-mail was delivered and read, facsimile with transmission and receipt verification; personal delivery; overnight delivery or certified mail, return receipt requested, at the SERVICER's addresses set forth at the beginning of this Agreement and at the Lender's address set forth below beneath the Lender's signature. Either party may change that party's address for notice by sending written notice to the other party. Notices pursuant to this paragraph shall be deemed received one business day after it was sent or transmitted as set forth herein or 2 business days after actual receipt, whichever is earlier.

12. Venue. This Contract shall be governed in all respects by the laws of Puerto Rico. Any lawsuit or other action brought by or against either of the parties based upon or arising from this Contract shall be brought in a court or other forum of competent jurisdiction in Puerto Rico.

13. Counterparts. This Agreement may be executed in duplicate counterpart, and each such counterpart together shall constitute one document. This Agreement shall be considered fully executed as of the date last signed. This Agreement may be signed and the signatures may be transmitted by scan and email, and such faxed or scanned signatures shall be considered as original signatures.

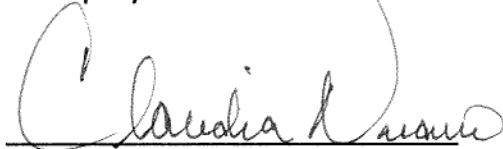
AGREED & ACCEPTED:

Benworth Capital Partners LLC,
a Florida limited liability company



By: Bernardo Navarro

Benworth Capital Partners PR,
a Company in formation under the laws of the Commonwealth of Puerto Rico



By: Claudia P. Navarro

EXHIBIT 9

AMENDED LOAN SERVICING AGREEMENT

This Amended Loan Servicing Agreement (the "Agreement") is dated September 23, 2021, and is between Benworth Capital Partners PR LLC, a Puerto Rico limited liability company and Puerto Rico Mortgage Lender/Servicer, NMLS No. 2234263, License No. IH-253, having an address at Plaza 221, 221 Avenida Ponce de Leon, Suite 140, San Juan, Puerto Rico ("SERVICER") and Benworth Capital Partners LLC, a Florida limited liability company and Florida Mortgage Lender Servicer, NMLS No. 374363, License No. MLD359, having an address at 700 Biltmore Way, Suite C-1, Coral Gables, FL 33134 ("Lender"). The prior Loan Servicing Agreement signed May 31, 2021 is null and void. The parties agree as follows:

Benworth Capital Partners LLC is a commercial mortgage lender/servicer and is organized in the State of Florida under the rules of the National Mortgage Licensing System and the laws of the State of Florida, Office of Financial Regulation (OFR) under Chapter 494 of the Florida Statutes.

Benworth Capital Partners PR LLC is a commercial mortgage lender/servicer and is organized in the Commonwealth of Puerto Rico under the rules of the National Mortgage Licensing System and the laws of Puerto Rico Oficina del Comisionado de Institutos Financieros (OCIF).

1. Scope.

- a. Lender retains SERVICER as Lender's agent to employ commercially reasonable efforts to collect all scheduled payments on various Loans originated by Lender ("Loan") which are evidenced by one or more promissory note(s) ("Note") and secured by one or more deed(s) of trust/mortgages ("Deed of Trust"), including the protection of the security for the Loan. SERVICER shall consult with and follow instructions from Lender on non-routine collection matters.
- b. Lender retains SERVICER as Lender's agent to assist with its portfolio of Paycheck Protection Program loans ("PPP loans"), mainly by assisting with obtaining Forgiveness for said loans, Servicing, administering Guaranteed Purchase, and to provide Fraud monitoring for said loans.

2. Term and Termination. This Agreement shall commence as of the date of this agreement and continue throughout as "SERVICER" receives all necessary documents to service loans and this Agreement executed by all parties. This Agreement shall terminate when any of these events occur: (a) payment in full of all Loans and reconveyance of the deed(s) of trust securing all the Loans; (b) 30-days written notice of termination by SERVICER to Lender; (c) 30-days written notice by Lender to SERVICER accompanied by instructions identifying the new person or entity to whom loan servicing shall be transferred; (d) issuance of a trustee's deed following a foreclosure of the Loan or final distribution of surplus proceeds whichever occurs last. Prior to the effectiveness of any termination, SERVICER shall deliver to Lender all of Lender's funds (less any amounts due Servicer), an appropriate accounting and all necessary documentation. At termination, Lender shall immediately reimburse SERVICER for any outstanding advances made pursuant to this agreement said funds cannot be intercepted as stated above.

3. Specific Loan Servicing Functions.

- As to mortgage loans, SERVICER shall: (a) issue payment coupons or monthly statements to the borrower directing Loan repayment to SERVICER; (b) issue payoff demands, beneficiary statements and verifications of mortgage; (c) demand, receive and collect all Loan payments and Loan payoff funds, and/or partial paydowns and deposit them immediately to SERVICER'S trust account and pay any such funds received to Lender within 25-days of receipt by the SERVICER; (d) issue annual income tax statements to the borrower and Lender; (e) answer borrower inquiries, demands and requests; (f) grant appropriate payment deferrals; however, the SERVICER shall not extend the Loan's maturity date without Lender approval, (g) maintain adequate insurance coverage which means that the SERVICER will monitor the continued effectiveness and claims on any property insurance listed in the Loan escrow instructions. Should borrower not pay for renewal of insurance, SERVICER may pay said premium or bind or obtain coverage for the Lender through its carrier, if said product is available; should property be impounded for insurance and federal or state law requires that servicer maintain the insurance when there is an impound account, thus requiring servicer to advance insurance payment, Servicer to be reimbursed for advance, (h) receive notices of property tax delinquencies, should a tax service be ordered through escrow or thereafter. SERVICER shall not be responsible should tax service fail to send timely notice; (i) execute and deliver on behalf of Lender and in Lender's name any documents necessary or convenient for the exercise of any rights or duties which Lender may have under the Loan; (j) endorse to SERVICER'S Trust Account any checks or money orders payable to Lender and to immediately deposit them into SERVICER'S trust account; (k) intentionally deleted; (l) notify Lender in writing within 5-days of the recording of any of Notice of Default or Notice of Trustee Sale on any senior liens about which Lender has informed SERVICER and on serviced loans; (m) notify Lender in writing within 5 days of the recording of any notice of default on their own loan (n) notify Lender within 5 days of the receipt of any payment constituting an amount greater than or equal to five monthly payments, together with a request for partial or total satisfaction of the mortgage, in which case the notice shall also indicate any further transfer or delivery instructions; (o) promptly forward to Lender a copy of any Notice of Sale or of any request for satisfaction on the Loan; (p) Lender within 15- days of any installments which becomes delinquent over 30-days; (q) provide a year-end accounting if required by statute or regulation; (r) promptly communicate to Lender any material information about collection of the Loan; and, (s) have the trust accounts of the SERVICER and of any affiliate, if any, inspected by an independent certified public accountant at no less than three-month intervals.
- As to PPP loans, on a daily basis SERVICER shall diligently communicate with borrowers to encourage them to apply for Forgiveness. This shall occur through phone communication, text, voice mail and emails.

As to PPP loans, SERVICER shall monitor all fraudulent loan applications and submit SBA OIG investigations. SERVICER will also submit Suspicious Activity Reports to FINCEN of the United States Treasury Department.

As to PPP loans, SERVICER shall facilitate the response to all subpoenas and request for information from any and all governmental agency.

As to PPP loans, SERVICER shall submit fraudulent or non-performing loans to the United States Small Business Administration (SBA) for Guaranteed Purchase.

As to PPP loans, SERVICER shall administer servicing functions for the Lender.

As to PPP loans, SERVICER shall monitor any PPP loan Bankruptcy filings and submit appropriate documentation to Bankruptcy court if needed.

As to PPP loans, SERVICER shall work with Lender's customers who have submitted a Forgiveness Application to the SBA and are required by the SBA to provide additional information needed to the SBA to process the Forgiveness Application (each customer shall be referred to as an "Audited Applicant"). Specifically, SERVICER shall assist all Lender's Audited Applications which receive a request under the SBA's requests for "lender additional information needed" or "all docs request" (each application shall be referred to as an "Audited Application").

- a. SERVICER shall check the SBA's forgiveness portal on a daily basis for any new Audited Applications.
- b. Upon receipt from the SBA of an Audited Application, SERVICER shall send the required notification, along with a request for additional documents, to the Audited Applicant within five (5) days.
- c. SERVICER shall attempt to contact the Audited Applicant for thirty (30) days by telephone and email.
- d. SERVICER shall assist Audited Applicants to perform all necessary steps to ensure the initial responsive submission of an Audited Application to the SBA.
- e. SERVICER cannot guarantee that the Audited Applicant will be responsive to SERVICER's request for documentation, and compensation to SERVICER shall not be contingent upon completed Audited Applications, but rather on SERVICER making attempts to contact the Forgiveness Applicant no less than four (4) times after SERVICER communicates the initial request from the SBA to the Forgiveness Applicant.
- f. SERVICER shall be responsible for submitting the notice of SBA decision on the Audited Application to the Audit Applicant, and work with the borrower on any appeals.
- g. SERVICER shall notify Lender if information is needed from Lender, who shall provide the requested information to SERVICER within five (5) days from the date of the request for timely submission to the SBA.
- h. The SBA may also request an explanation as to Lender's proposed forgiveness amount. As to these requests, Lender shall be solely responsible to provide responses to the SBA.
- i. Lender shall designate a contact to which SERVICER can direct all requests for information, as well as status updates regarding the forgiveness files.

4. Handling of Funds and Notices. Payments received by SERVICER pursuant to this agreement shall not be commingled with the assets of the SERVICER or used for any transaction other than the transaction for which the funds are received (unless directed by Lender or Lender's agent). If the source for the payment is not the maker of the note, the SERVICER shall inform the Lenders in writing of the source for payment. If the SERVICER transmits to Lenders the SERVICER'S own funds to cover payments due from the borrower but

unpaid as a result of a dishonored check, the SERVICER may recover the amount of the advances from the trust fund when the past due payment is received or within 10 days of billing lender. Neither SERVICER nor any other person, is authorized by this Agreement or by law to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

5. SERVICER Reliance of Information and Lender Representations. The undersigned Lender represents that Lender, or its assignees, if any, owns the entire beneficial interest in the Loan. Lender agrees that SERVICER may rely on all prior servicing records and information provided to SERVICER by Lender or by a predecessor loan servicer and that SERVICER has no obligation or duty to research or verify such prior servicing records and information.

6. Authority of SERVICER. Without further authorization, Lender expressly authorizes SERVICER to take any actions set forth in this Agreement including, but not by way of limitation, those necessary to engage in loss mitigation, forbearance agreements, loan modifications, to initiate, conduct and conclude a non-judicial or judicial foreclosure or to exercise, on behalf of Lender, any remedies Lender may have. **Lender understands that SERVICER does not have a propriety modification or forbearance plan available to offer borrowers. Lender represents that the Loan does not currently fall under any mandated government programs for payment assistance should the borrower default. Unless the Lender provides SERVICER with a written copy of Lender's proprietary loan modification or forbearance plan, Lender represents to SERVICER that Lender has no such plans. SERVICER is not authorized to enter into any forbearance plan or loan modification without the written consent of Lender unless mandated by statute or regulation. Lender authorization shall be on a loan-by-loan basis and shall be considered a "non-routine" matter. Upon Lender's consent, SERVICER may enter, on Lender's, or its assignee's behalf, a loan modification or forbearance plan.**

Lender authorizes SERVICER to employ outside services ("Contractors") reasonably necessary in the SERVICER sole discretion to protect Lender's interest in the Loan. These Contractors may include, but are not limited to, appraisers, attorneys, accountants, foreclosure agents/trustees, and services provided by SERVICER or by affiliated firms that are not within the scope of this Agreement (e.g., foreclosure agent or trustee when a foreclosure must be commenced). Whether Contractor's fees and costs have been incurred or whether they are yet to be incurred, upon SERVICER'S demand, Lender shall pay said Contractor fees and costs as directed by SERVICER. SERVICER may produce a copy of this Agreement as evidence of its authority. Should property be located in a city or county in which an ordinance exists where registration fees, inspection fees, etc. exist, Lender understands that Lender is responsible for payment of said fees, either directly by request of SERVICER or reimbursement to SERVICER.

7. Default of Borrower. Upon borrower's default under the Loan Documents and after receiving instructions of Lender, SERVICER, or its designated Contractor (e.g., trustee, substitute trustee, or foreclosure agent) are each authorized by Lender to take any and all reasonable or necessary actions on behalf of Lender to: (1) satisfy or complete any conditions precedent to initiating, processing and concluding a non-judicial or judicial foreclosure, including, but not limited to, taking any actions required or permitted by the Loan Documents or pursuant to State law; and (2) to initiate, process, and conclude a non-judicial foreclosure including, but not limited to, taking any actions required or permitted by the Loan Documents or pursuant to State law. The authority granted by the Lender under this Agreement includes, but is not limited to, SERVICER and a Contractor selected by SERVICER (e.g., trustee, substitute trustee, or foreclosure agent) each of whom is authorized to take all actions on behalf of Lender relating to executing and processing a Notice(s) of Default; a Declaration of Mortgage SERVICER included in the Notice(s) of Default; using a title company or vendor of SERVICER'S choice for recording documents on behalf of Lender, SERVICER or its Contractor; to prepare and

record a Substitution of Trustee, if needed; to order a Trustee's Sale Guarantee or litigation guaranty; to mail "Post-Notice of Default Solicitation Letter" if necessary; to post, publish and take any and all other action regarding a Notice of Foreclosure Sale; to request a bid or postponement information; to send required postponement letters under Lender's or SERVICER'S name; to conduct and/or continue a Foreclosure Sale; to distribute all funds received whether reinstatement, payoff, or trustee sale proceeds. For each default of borrower, Lender authorizes SERVICER, in its sole discretion, to direct any and all foreclosure actions through foreclosure sale (which includes final distribution of any surplus proceeds), reinstatement, redemption or other legal satisfaction or extinguishment of the Deed of Trust/Mortgage. Lender understands that SERVICER may "underbid" to commence bidding, but SERVICER shall not accept less than full credit bid at Foreclosure sale without Lender's approval. Additionally, SERVICER has authority to quote payoff/reinstatements, or redemption figures to borrower and to collect all funds on Lender's behalf and release to lenders. While having the authority to do so, Lender agrees that SERVICER may refuse to take any action to initiate, process or conclude a non-judicial or a judicial foreclosure: (1) without an instruction from Lender; and, (2) until Lender has deposited any fees, costs, instructions, and documents required by SERVICER or by Contractor (e.g., trustee, substitute trustee or foreclosure agent).

8. Protective Advances. Lender shall make such advances that are necessary and prudent to protect and to collect Lender's interest in the Loan. SERVICER, in its absolute discretion, may, but is not obligated to, advance its own funds to protect the security of Lender's Loan, including making advances to cure senior liens, property insurance, foreclosure expenses, repairs, advertising, litigation expenses, and similar items, but not Loan payments. SERVICER shall be reimbursed such advances within 10 days after the SERVICER'S written demand on Lender. SERVICER may be entitled to fees for these advances. To secure SERVICER's advances, Lender hereby irrevocably assigns to SERVICER, to the extent of advances owed to SERVICER, the next Loan payments or portion of loan payoff received after a SERVICER advance is made. Should Lender not reimburse SERVICER upon SERVICER'S demand for any fees or advances due SERVICER, SERVICER has the right to deduct said amount from any funds due Lender (including funds from other loans serviced by SERVICER to the extent of said Lender's interest in said other loans being serviced by SERVICER).

9. Loan Documents. SERVICER shall retain custody as agent for Lender of the original note, deed of trust, mortgage, and any other document SERVICER feels is necessary to properly service the Loan. Lender is to receive notice of receipt of original documents at time of receipt by SERVICER. On assigned investor loans, the custody of documents shall be agreed upon by all parties.

10. Compensation. For its services, SERVICER shall be paid the following amounts, broken down as follows:

TYPE OF SERVICE	to SERVICER		to Lender
Mortgage Loan Servicing Fee	75% of the differential fee		25% of the differential fee
Mortgage Late Charge (10%)	50%		50%
Mortgage loan preparation and recording of each Request for Notice	\$50.00		0
Mortgage loan Set Up Fee – Should all	\$125.00		0

documentation not be received at the onset or additional work must be performed to set up this file, an additional fee in the amount of "\$75.00-\$150.00" shall be charged to Lender			
Mortgage Default Interest	If default interest is 25%, 25% If default interest is 18%, 25%		75% 75%
Mortgage Prepayment Penalty	50%		50%
PPP loan forgiveness Fee	\$500.00 per file		0
PPP loan Fraud Monitoring Fees and Guaranteed Purchase	\$50.00 per file		0
PPP loan Servicing	65 bps		0

In addition, all payoff demand/reinstatement fees, verification of mortgage fees, wire fees, NSF fees, overnight charges, forbearance agreement/modification fees, and bankruptcy administration fees are 100% due to SERVICER-- SERVICER'S compensation is subject to change upon 30-days written notice to Lender; Lender may avoid changes by terminating this Agreement in writing within the 30-day period. Should Lender cancel servicing, a \$50.00 fee **per file cancelled** shall apply in addition to the minimum servicing fee charge per file. Should SERVICER be required or requested to perform additional services outside the scope of this Agreement (e.g., trial testimony, deposition testimony, travel and waiting time in litigation matters), an hourly rate of \$75.00 to \$250.00 per hour may apply, depending upon the type of personnel needed to perform said duty. This does include SERVICER'S testimony time in court or in deposition. To secure SERVICER'S COMPENSATION, Lender hereby irrevocably assigns to SERVICER, to the extent of compensation owed to SERVICER, the next Loan payments or portion of loan payoff received from this loan or any other loan which may be owned by Lender after SERVICER'S compensation has not been paid.

11. Value of Real Estate Security. Lender further understands and agrees that the security for any Note and Deed of Trust/Mortgage is directly related to the equity in the security real estate ("Secured Property"). Lender understands that the value or saleability of real estate can change at any time and, therefore, that equity in the security real estate can increase or decrease. Lender hereby releases SERVICER from any liability whatsoever in connection with the determination of the value of the Secured Property.

12. Lender Indemnification of Servicer. Lender agrees to hold harmless, indemnify and defend SERVICER from any and all claims, demands, judgments, actions, and liability [herein collectively "Claims"], including attorney's fees and costs incurred in responding to and/or defending against such Claims, arising from, or relating to in any way, the loan(s) and mortgages(s) which are the subject of this Agreement ("Indemnity").

Indemnity under this Agreement shall also apply to Claims arising from, or related to: (1) the SERVICER'S conduct under this Agreement except for conduct of the SERVICER that is adjudicated to be the direct result of SERVICER'S gross negligence or willful misconduct; (2) the conduct of Lender's Brokers who originated the Loan for either the original lender or for the borrower; (3) Any conduct of any predecessor or successor loan servicer; (4) the trustee, substitute trustees, foreclosure agents and vendors providing foreclosure related services; and, SERVICER'S agents, employees, managing members, officers and directors.

13. Survival. The provisions of this Agreement relating to indemnity and all provisions relating to SERVICER'S fees, costs, and reimbursements for advances, shall survive the termination of this Agreement.

14. Notice. Notices pursuant to this Agreement shall be in writing and may be served by email with confirmation that the e-mail was delivered and read, facsimile with transmission and receipt verification; personal delivery; overnight delivery or certified mail, return receipt requested, at the SERVICER'S addresses set forth at the beginning of this Agreement and at the Lender's address set forth below beneath the Lender's signature. Either party may change that party's address for notice by sending written notice to the other party. Notices pursuant to this paragraph shall be deemed received one business day after it was sent or transmitted as set forth herein or 2 business days after actual receipt, whichever is earlier.

15. Venue. This Contract shall be governed in all respects by the laws of Puerto Rico. Any lawsuit or other action brought by or against either of the parties based upon or arising from this Contract shall be brought in a court or other forum of competent jurisdiction in Puerto Rico.

16. Counterparts. This Agreement may be executed in duplicate counterpart, and each such counterpart together shall constitute one document. This Agreement shall be considered fully executed as of the date last signed. This Agreement may be signed and the signatures may be transmitted by scan and email, and such faxed or scanned signatures shall be considered as original signatures.

AGREED & ACCEPTED:

Benworth Capital Partners LLC,
a Florida limited liability company


By: Bernardo Navarro
NMLS #329578

Benworth Capital Partners PR LLC,
a Puerto Rico limited liability company

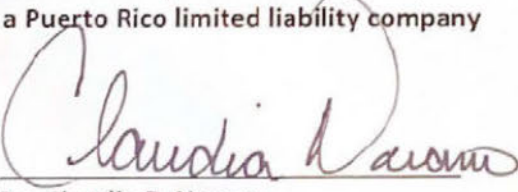

By: Claudia P. Navarro
NMLS #341277

EXHIBIT 10

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT COURT DIVISION

CASE NO. 12-12858 CA 27

TOTAL BANK, a Florida corporation,

Plaintiff,

vs.

BERNARDO ENRIQUE NAVARRO,
an individual,
Defendant.

_____ /

The above-entitled cause came on for hearing before the
Honorable Rosa Rodriguez, Judge of the above-styled court,
at the Dade County Courthouse, Miami, Florida, on the 29th
day of January, 2014, commencing at 11:30 a.m.

EDMEE PRATS COURT REPORTING SERVICES
(305) 324-5431



APPEARANCES

On behalf of the Plaintiff:

SAPURSTEIN & BLOCH, P.A.
9700 South Dixie Highway
Suite 1000
Miami, Florida 33156
BY: BURT SAPURSTEIN, ESQUIRE

On behalf of Benworth:

LAW OFFICE OF ALEXIS GONZALEZ, P.A.
3162 Commodore Plaza, Suite 3-E
Coconut Grove, Florida 33133
BY: LAZARO VAZQUEZ, ESQUIRE

1 (Thereupon, the following proceedings
2 were had:)

3 THE COURT: Total Bank versus Navarro,
4 is anybody here for this?

5 MR. VAZQUEZ: Yes, Your Honor. Lazaro
6 Vazquez on behalf of the Garnishee, Benworth
7 Capital Partners, LLC.

8 MR. SAPURSTEIN: Burt Sapurstein on
9 behalf of Plaintiff, Total Bank.

10 Good morning, Your Honor.

11 MR. VAZQUEZ: We have a court reporter
12 present here today.

13 THE COURT: Great. Please announce your
14 appearances.

15 MR. VAZQUEZ: Lazaro Vazquez on behalf
16 of Garnishee, Non-Party Benworth Capital
17 Partners, LLC.

18 MR. SAPURSTEIN: And Burt Sapurstein on
19 behalf of Total Bank, the Plaintiff.

20 MR. VAZQUEZ: Your Honor, before I begin
21 my argument, just two things. If I may
22 approach with a copy of the motion, I have a
23 hard copy for the court.

24 THE COURT: Great. I have a copy. It's
25 NON-PARTY Benworth Capital Partners, LLC's

1 Motion for Protective Order and Objections to
2 Corporate Representative Subpoena... just to
3 make sure that is the same copy.

4 MR. VAZQUEZ: Yes, Your Honor, that is
5 what I just handed to the court.

6 THE COURT: I have it.

7 MR. VAZQUEZ: Your Honor, before I get
8 into the merits of the actual argument, and I
9 just want to make sure that the court is
10 aware that the garnishee's position is, it's
11 not objecting to any discovery being sought
12 in execution of the final judgment against
13 the individual Defendant who is Bernardo
14 Enrique Navarro. Our objections are actually
15 as to particular points raised in the Notice
16 of Deposition Duces Tecum. First of all,
17 Benworth is not a party, it is a garnishee,
18 and as a matter of fact, Benworth is a
19 competitor of Total Bank; Benworth issues
20 loans just like Total Bank issues loans, so
21 they're both in the same industry.

22 I also want to bring up to the court's
23 attention that the court has not ordered
24 Mr. Navarro to file a fact information sheet.
25 I have a copy here of the Final Judgment,

1 Default Final Judgment, which doesn't say
2 that the individual Defendant is ordered to
3 file a fact information sheet. Now, the
4 issue is that they're seeking the discovery
5 as to the finances of Benworth, the actual
6 corporation and as to the finance of other
7 employees at Benworth, and that's the extent
8 of our objection.

9 If Your Honor goes to Page 2 of our
10 motion, it says that Benworth is -- excuse
11 me, that they're asking -- examination topic
12 number two, they're asking Benworth to
13 produce a representative regarding the
14 payments made to other employees of the
15 garnishee for the years 2012 to 2013.
16 They're also seeking any person reporting
17 self-employment income through garnishee for
18 the years 2012 through 2013, and they're
19 seeking Benworth produce a representative
20 regarding the financial records of garnishee
21 for the years 2012 through 2013.

22 Our entire position has been, they're
23 obviously entitled to seek discovery of
24 the -- any payments that are going towards
25 Bernardo Enrique Navarro, but everything else

1 is off limits because otherwise it turns into
2 a fishing expedition.

3 THE COURT: Let me interrupt.

4 MR. VAZQUEZ: Yes.

5 THE COURT: The Defendant is Navarro, as
6 an individual only?

7 MR. VAZQUEZ: Yes, Your Honor.

8 THE COURT: And the judgement is as to
9 Navarro as an individual only?

10 MR. VAZQUEZ: Yes, Your Honor.

11 THE COURT: I just want to make sure. Go
12 ahead.

13 MR. VAZQUEZ: And going forward -- I
14 have a copy of the --

15 THE COURT: I'm sorry to interrupt you
16 again. You don't have an objection to any of
17 this as it pertains to Mr. Navarro
18 individually, your objection is as to other
19 parties; is that correct?

20 MR. VAZQUEZ: Yes, Your Honor.

21 THE COURT: Okay. So the employees
22 namely are the only other parties that
23 there's an interest in?

24 MR. VAZQUEZ: Yes.

25 THE COURT: Okay.

1 MR. VAZQUEZ: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. VAZQUEZ: And I have here about
4 seven or so employees that are employed by
5 Benworth.

6 THE COURT: Okay. Let me just cut to the
7 chase here -- I'll get back to you.

8 Mr. Sapurstein, that has a certain
9 visceral appeal right away, that if he's the
10 garnishee and if he's an individual. So
11 explain.

12 MR. SAPURSTEIN: Happy to, Your Honor.

13 THE COURT: Okay.

14 MR. SAPURSTEIN: If I may, I'd like to
15 show the court the Florida Department of
16 State, Division of Corporation information on
17 Benworth.

18 THE COURT: Okay.

19 MR. SAPURSTEIN: So that Your Honor can
20 see that the manager of Benworth is
21 Mr. Navarro. I also have the deposition in
22 aid of execution of Mr. Navarro that we took
23 a little over a year ago, Your Honor. This
24 is the original, if I may.

25 And, Your Honor, this is not a situation

1 where we're dealing with a third party
2 unrelated to our debtor, this is a
3 corporation owned and controlled by our
4 debtor.

5 In the deposition, Your Honor, Page 9,
6 Line 18, I ask Mr. Navarro: "Are you
7 employed, sir?"

8 "Yes."

9 "By whom?"

10 "Benworth Capital Partners."

11 "And what position do you hold?"

12 "President."

13 Well, actually he's the manager, Your
14 Honor.

15 THE COURT: Okay.

16 MR. SAPURSTEIN: And so I said: "Are you
17 paid a salary?"

18 And he said: "No."

19 I said: "How are you paid?"

20 And his answer was, moving to Page 10.

21 "Year end, I get paid at the end of the
22 year."

23 And I said: "Do you get one check?"

24 He said: "Yes."

25 "And did you receive a check in December

1 of '12?"

2 "No."

3 "Why not?"

4 "My accountant hasn't done it yet."

5 "Are you expecting a check in a
6 particular amount?"

7 "I don't know."

8 "You don't know if you're expecting to
9 get paid?"

10 "I don't know when I'm expecting it."

11 "How much is the check going to be?"

12 "I don't know."

13 So we go on to Page 12, and I'm asking
14 him how do you explain how much money you're
15 going to get, you're the president?

16 I said: "Are you also the owner of
17 Benworth?"

18 "I'm an owner."

19 "Are you a shareholder?"

20 "Yes."

21 Then he says his percentage of the
22 shares is nine percent and his wife's
23 percentage is 91 percent, Your Honor.

24 So when we start talking about other
25 employees specifically, I want to know about

1 his wife who he said -- moving to Page 13,
2 Your Honor: "Is your wife employed by
3 Benworth?"

4 "Yes."

5 "What does she do?"

6 "She helps with the office."

7 "She's an office worker?"

8 "Yes."

9 "And does she receive a salary?"

10 "Yes."

11 "How much does your wife receive?"

12 And he says that he has no idea.

13 THE COURT: Let me ask you, are you
14 seeking only Mr. Navarro and Mrs. Navarro or
15 are there others?

16 MR. SAPURSTEIN: Well, in his deposition
17 he says he has two or three --

18 THE COURT: I'll let you respond.

19 MR. SAPURSTEIN: He says he has two or
20 three other employees, Your Honor. I don't
21 care about the other unrelated employees.

22 THE COURT: Okay. So you're interested
23 in the wife?

24 MR. SAPURSTEIN: I'm interested in the
25 wife.

1 THE COURT: Okay.

2 MR. SAPURSTEIN: I'm interested in
3 Mr. Navarro. It doesn't sound to me like
4 somebody who says he gets one check at the
5 end of the year, is the manager of the LLC,
6 is the member of the LLC and suddenly say, "I
7 don't know how much money I'm getting," et
8 cetera et cetera.

9 THE COURT: I didn't know what this
10 business -- I just didn't know the scenario.

11 MR. SAPURSTEIN: No, of course not.

12 THE COURT: I didn't know any of these
13 facts.

14 MR. SAPURSTEIN: He does go on to say
15 that his wife gets paid \$70,000 on Page 19 of
16 the, of the deposition.

17 And I would also point out that he was
18 subpoenaed to bring his tax return and he
19 brought only two pages and never brought the
20 schedules including the K1 which would tell
21 us the theoretically how much he earned from
22 Benworth. So there's that issue as well,
23 Your Honor.

24 THE COURT: I understand.

25 MR. SAPURSTEIN: Thank you.

1 THE COURT: Thank you. Okay. Got the
2 picture somewhat.

3 Let me hear from you again.

4 MR. VAZQUEZ: Just briefly, Your Honor.
5 Again, it's very important to note that
6 Benworth is a direct competitor of Total Bank
7 so there -- if you take a look at their
8 specific request, and I attached a copy of
9 the Notice of Deposition.

10 THE COURT: I have it here.

11 MR. VAZQUEZ: It's not requesting what
12 he's saying he wants here today in court,
13 it's actually very, very ambiguous.

14 THE COURT: Where are you reading? I
15 have Page 1 or -- where --

16 MR. VAZQUEZ: Exhibit A.

17 THE COURT: Hold on. Number 1 -- you
18 mean you're going to be asking about payments
19 to him or just like, you know, like, when he
20 was employed and how much he's been paid? .

21 MR. VAZQUEZ: I don't have an objection
22 to Number 1, Your Honor.

23 THE COURT: Okay.

24 Number 2 is going to be only other
25 employees, but that's really going to be just

1 to the wife, correct, Mr. Sapurstein?

2 MR. SAPURSTEIN: Yes, Your Honor.

3 THE COURT: Wife only?

4 MR. SAPURSTEIN: Yes.

5 THE COURT: And then 3, any person
6 reporting self-employment income -- I don't
7 understand that.

8 MR. SAPURSTEIN: Well, Your Honor,
9 again, they didn't bring their entire tax
10 return, notwithstanding the fact that they
11 were subpoenaed to do so. So, we're not sure
12 whether he pays himself a 1099 and he does
13 self-employment tax, or whether he get a W-2
14 from Benworth.

15 THE COURT: Okay.

16 MR. SAPURSTEIN: We'd like to see the
17 W-2's of both Mr. Navarro and his spouse so
18 we can determine if they're paid. He claims
19 he gets one check at the end of the year.
20 We'd like to see the payroll, we'd like to
21 see if that's correct.

22 THE COURT: Okay.

23 MR. SAPURSTEIN: And they can redact it
24 as to any other employee, other than
25 Mr. Navarro and his spouse.

1 THE COURT: So basically you want the
2 W-2, any payroll records or documentation
3 reflecting payments to Mr. and Mrs., whether
4 they're as employees or 1099's or whatever.

5 MR. SAPURSTEIN: Exactly, Your Honor,
6 that's correct.

7 THE COURT: Okay, I understand. And then
8 financial records of the garnishee for the
9 years 2012 and 2013.

10 MR. VAZQUEZ: That's overly ambiguous,
11 Your Honor.

12 THE COURT: Hold on.

13 MR. VAZQUEZ: That's our issue.

14 MR. SAPURSTEIN: Again, Your Honor,
15 since Mr. Navarro is the member/owner of the
16 company, along with his wife, they appear to
17 own 100 percent of the company, we'd like to
18 see the balance sheet, we'd like to see the
19 assets, we'd like to see what monies are
20 being earned by that company because that
21 bares directly on the ability we believe of
22 Mr. Navarro to pay this judgment.

23 THE COURT: Okay. I understand.

24 Let me hear -- let's start with two.
25 This goes to the wife considering that she

1 owns 91 percent.

2 MR. VAZQUEZ: Your Honor, just cutting
3 to the chase. The bottom line is what he's
4 requesting is.... he wants the wife's
5 information. The wife has a private
6 financial interest in this information that's
7 separate and apart from her husband. The
8 judgement was entered personally against
9 Bernardo Enrique Navarro, it was not entered
10 against his wife, that's the whole reason why
11 we're objecting today. I feel that the
12 wife's private financial information is off
13 limits as well and I have case law to support
14 that. They haven't shown -- there has to be
15 some kind of good faith predicate to show
16 that there's something going on where it
17 would alert them to the fact that they have
18 to have discovery as to this person.

19 THE COURT: Let me see your case.

20 MR. VAZQUEZ: Yes.

21 THE COURT: Let me see it.

22 And then really four goes hand in hand
23 because that's related to the wife also.

24 In light of Mr. Navarro seeming to be in
25 control of the company but with the wife

1 actually owning the stock, you know, I
2 understand the concern.

3 MR. SAPURSTEIN: Your Honor, also in the
4 deposition, I said: "What does your wife do,
5 she has three children at the time six and
6 under?"

7 He said: "She works from the home."

8 I said: "Well, what does she do?"

9 And his answer was: "Well everything,
10 she washes the floor, she types." This is
11 the response I got.

12 THE COURT: At the business?

13 MR. SAPURSTEIN: Yes, notwithstanding
14 the fact that she's allegedly the 91 percent
15 owner of the company.

16 THE COURT: Give those to the bailiff,
17 please.

18 Let me see the cases that you have.

19 So you've given me this Rappaport case,
20 and in this case they were just going after
21 discovery of the wife, there was no company
22 in the middle like we have here.

23 MR. VAZQUEZ: Correct, Your Honor.

24 THE COURT: I'm just glancing at it, so
25 I'm going to rely on you if I've

1 misapprehended it.

2 MR. VAZQUEZ: I'm sorry, Your Honor. If
3 I could direct the court to this one
4 particular case out of the Third D.C.A.

5 THE COURT: Yes.

6 MR. VAZQUEZ: It's a law firm -- you
7 have the copy in front of Your Honor.

8 THE COURT: Yes.

9 MR. VAZQUEZ: It's Pyszka Kessler
10 Massey. It's the Law Firm's move for a
11 protective order in a dissolution of marriage
12 proceeding to limit discovery of financial
13 documents by non-equity partner's wife.

14 This is the same scenario, where the
15 wife is a partner in Benworth and she has no
16 stake in this judgment, the judgement is
17 entered against her husband, and now they're
18 trying to backdoor in and reach the wife, but
19 they haven't laid that predicate.

20 THE COURT: Well, they're not really
21 trying to reach the wife, from what I
22 understand, they're trying to reach his
23 interest in this Benworth company and whether
24 any of his interests in that or assets,
25 either assets, interest in the company or

1 income is, I guess, being diverted to the
2 wife. It's not a situation, as I see it,
3 where they're just, you know, going to the
4 wife just because she's the wife.

5 MR. SAPURSTEIN: Exactly.

6 MR. VAZQUEZ: And the court has hit on
7 the point. They're trying to see if he's
8 diverting monies to the wife, but they
9 haven't established anything. There has --
10 he has to lay some kind of predicate. He
11 took the man's deposition, man referring to
12 Navarro, and Navarro, in full candor, said
13 this is my wife's interest, this is what she
14 does for a living. But that's not a showing
15 to the court that it's sufficient to invade
16 the wife's privacy interest as a partner of
17 Benworth.

18 MR. SAPURSTEIN: Your Honor, it takes a
19 lot of temerity to stand before the court,
20 when your client comes to a deposition and
21 says that he's the nine percent owner, his
22 wife's 91, she gets 70,000, he may or may not
23 get a check, yet the documents with Secretary
24 of State reflect that he's the manager of the
25 company, it's his company. What does she do?

1 She washes the floor and types.

2 It's clear that this Defendant is
3 attempting to hide income and assets, and I
4 think it's very reasonable to take a look and
5 see the extent to which that is happening.

6 THE COURT: I've heard enough. I'm going
7 to deny the Motion for Protective Order
8 regarding the wife, you know, matters related
9 to her and this company, given that
10 Benworth --

11 MR. VAZQUEZ: Benworth Capital Partners.

12 THE COURT: -- is a competitor, if
13 there's some kind of confidentiality
14 agreement that you all want to include or --
15 you know, certainly I would, you know, be
16 willing because I understand, but I don't
17 know that any proprietary issues, you know,
18 would come up, but you could consider that.

19 But I think that as to the wife's
20 finances, just as to this one company, his
21 interest in this one company, is not
22 inappropriate.

23 MR. VAZQUEZ: Your Honor, if I could
24 just make a record.

25 THE COURT: Sure.

1 MR. VAZQUEZ: We've cited to the 3rd
2 D.C.A.'s opinion at 602 So.2d 955, Pyszka,
3 Kessler, Massey, Weldon, Catri, Holton, &
4 Douberley v. Mullin.

5 It's our position that, "Disclosure of
6 information delineating the partners'
7 financial situation unnecessarily violates
8 their privacy rights." And we're relaying on
9 this opinion. And here the order would
10 violate the privacy rights of the wife.

11 The next opinion that we're relying on
12 would be Bradstreet v. Taraschi, it's at 529
13 So.2d 809. "In a dissolution of marriage
14 action, a third party's financial records may
15 discoverable if an issue arises as to
16 improper financial dealings between the third
17 parties and one of the spouses. However, it
18 is improper to require a third party to
19 disclose financial records which are not
20 relevant to any economic issues in the
21 action. Trial courts must perform a delicate
22 balancing act, an inquiry which is too
23 limited may prevent a spouse from obtaining
24 evidence necessary to show the misconduct
25 alleged, while an overwrought inquiry becomes

1 an unfettered fishing expedition." And
2 that's our position here.

3 If the court would allow us to have
4 maybe an evidentiary hearing, we also have
5 case law that says that the showing must be
6 made at an evidentiary hearing as far as
7 demonstrating the need to take a third party
8 deposition and invade their private finances;
9 I don't know if the court would be amenable
10 to that.

11 THE COURT: Well, I've already had a
12 hearing and I've ruled so I'm not sure what
13 you're asking. Now you want an evidentiary
14 hearing? I'm not sure where that fits into
15 this picture.

16 MR. VAZQUEZ: In other words, it's our
17 position that the case law mandates that the
18 party requesting the discovery has to request
19 an evidentiary hearing and prove to the court
20 and make detailed findings of fact as to
21 whether or not there is something -- some
22 deceit or something devious going on as far
23 as moving the finances between the wife and
24 husband, and it's our position that they have
25 not shown that.

1 THE COURT: Well, that's a different
2 issue because I've ruled and you're making
3 that argument after I've given a ruling, so I
4 think you've waived that, as far as I'm
5 concerned.

6 MR. SAPURSTEIN: Your Honor --

7 THE COURT: So that's my ruling.

8 MR. SAPURSTEIN: Your Honor, from a
9 timing standpoint, how long for them to
10 produce and to appear at a deposition? It's
11 been several months because they requested a
12 special hearing.

13 THE COURT: I don't know. I mean, was it
14 because you wanted to wait for this?

15 MR. VAZQUEZ: Yes, Your Honor.

16 THE COURT: Okay, so --

17 MR. VAZQUEZ: We'll cooperate. We'll
18 prepare a proposed agreed order -- proposed
19 order based on the court's ruling.

20 THE COURT: I don't know. Within what?
21 A couple of weeks, a week, ten days? I mean,
22 I don't know if you're going to take it up.

23 MR. VAZQUEZ: Twenty days.

24 MR. SAPURSTEIN: Twenty days is fine
25 with me, Your Honor, if they'll produce

1 within 20 days. And how long to appear for a
2 deposition, Your Honor, a corporate
3 representative, to appear for a deposition?
4 Thirty days, an agreed time within 30 days?

5 MR. VAZQUEZ: I don't know whether my
6 client is available or not, but 30 days is --

7 THE COURT: That sounds more than
8 reasonable. I'll tell you what, let's make
9 it 30 days and if there's some extreme
10 hardship or some problem that -- Mr.
11 Sapurstein is reasonable as far as I know --
12 no, you've always been pretty reasonable, so
13 I can't imagine that if there's is some
14 legitimate scheduling issue that you wouldn't
15 be able to work it out, but, you know, I'm
16 here in case you can't.

17 MR. SAPURSTEIN: Thank you, Your Honor.

18 THE COURT: Thank you. Nice to see you
19 all. Have a nice day.

20
21 (Thereupon, at 12:00 the hearing was
22 concluded for the day.)

23 - - -

24

25

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, JOANNE CAUDILL, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the proceedings in the above-styled cause before the Honorable Rosa Rodriguez at the time and place herein set forth and that the foregoing transcript constitutes a true and complete record thereof.

I further certify that I am not an attorney or counsel to any of the parties, nor financially interested in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 29th day of January, 2014.

JOANNE CAUDILL, COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OTO ANALYTICS, LLC,

(b) County of Residence of First Listed Plaintiff Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alejandro J. Cepeda Diaz, McConnell Valdés LLC
270 Muñoz Rivera Ave. San Juan, Puerto Rico 00918
(787) 250-2610

DEFENDANTS

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

County of Residence of First Listed Defendant San Juan, Puerto Rico
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Corali Lopez-Castro, Kozyak Tropin & Throckmorton
2525 Ponce de Leon Blvd, FL 9, Miami, FL 33134
(305) 347-1774

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | ☐ 1 | ☒ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☒ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☒ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☒ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSD Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)(1)

Brief description of cause:

Plaintiff alleges Defendants fraudulently transferred more than \$75,000

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/24/2023

SIGNATURE OF ATTORNEY OF RECORD

s/Alejandro J. Cepeda-Diaz

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI): Cepeda Alejandro, J.
USDC-PR Bar Number: 222110
Email Address: ajc@mcvpr.com

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff: OTO ANALYTICS, LLC

Defendant: BENWORTH CAPITAL PARTNERS PR LLC

2. Indicate the category to which this case belongs:

- ☐ Ordinary Civil Case
☐ Social Security
☐ Banking
☒ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

- ☐ Yes
☒ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

- ☐ Yes
☒ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

- ☐ Yes
☒ No

Date Submitted: 1/24/23

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

OTO ANALYTICS, LLC,

Plaintiff(s)

v.

Benworth Capital Partners PR LLC et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Benworth Capital Partners PR LLC
954 Ave Ponce de Leon
Suite 205 - PMB 10319
San Juan, PR 00907

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — or 90 days in a Social Security Action — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alejandro J. Cepeda-Díaz
McConnell Valdés LLC
270 Muñoz Rivera Ave.
San Juan, Puerto Rico 00918

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MARIA ANTONGIORGI-JORDAN, ESQ
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

OTO ANALYTICS, LLC,

Plaintiff(s)

v.

Benworth Capital Partners PR LLC et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Benworth Capital Partners LLC
700 Biltmore Way, Suite C1
Coral Gables, FL 33134

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — or 90 days in a Social Security Action — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alejandro J. Cepeda-Díaz
McConnell Valdés LLC
270 Muñoz Rivera Ave.
San Juan, Puerto Rico 00918

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MARIA ANTONGIORGI-JORDAN, ESQ
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

OTO ANALYTICS, LLC,

Plaintiff(s)

v.

Benworth Capital Partners PR LLC et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Bernardo Navarro
954 Ave Ponce de Leon,
Suite 205 - PMB 10319,
San Juan, PR, 00907

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — or 90 days in a Social Security Action — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alejandro J. Cepeda-Díaz
McConnell Valdés LLC
270 Muñoz Rivera Ave.
San Juan, Puerto Rico 00918

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MARIA ANTONGIORGI-JORDAN, ESQ
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

DPR MODIFIED AO 440 (Rev. 05/22) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of

OTO ANALYTICS, LLC,

Plaintiff(s)

v.

Benworth Capital Partners PR LLC et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Claudia Navarro
954 Ave Ponce de Leon,
Suite 205 - PMB 10319,
San Juan, PR, 00907

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — or 90 days in a Social Security Action — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alejandro J. Cepeda-Díaz
McConnell Valdés LLC
270 Muñoz Rivera Ave.
San Juan, Puerto Rico 00918

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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