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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

OTO ANALYTICS, LLC f/k/a OTO
ANALYTICS, INC. d/b/a WOMPLY,

Petitioner,

v.

BENWORTH CAPITAL PARTNERS, LLC,

Respondent.

Case No. 3:24-cv-03975-AMO

**DECLARATION OF DWAYNE A.
ROBINSON, ESQ. IN SUPPORT OF
BENWORTH'S ADMINISTRATIVE
MOTION FOR CLARIFICATION OF
DEADLINE AND/OR FOR EXTENSION
OF TIME TO RESPOND TO WOMPLY'S
PETITION**

Hon. Araceli Martinez-Olguin

**DECLARATION OF DWAYNE A. ROBINSON, ESQ. IN SUPPORT OF BENWORTH'S
ADMINISTRATIVE MOTION FOR CLARIFICATION OF DEADLINE AND/OR FOR
EXTENSION OF TIME TO RESPOND TO WOMPLY'S PETITION**

Case No. 3:24-cv-03975-AMO

1 I, Dwayne A. Robinson, hereby declare under penalty of perjury:

2 I am a Partner at the law firm Kozyak Tropin & Throckmorton LLP. I submit this declaration in
3 support of the Benworth's Administrative Motion for Clarification of Deadline and/or For Extension of
4 Time to Respond to Womply's Petition. I make this declaration based on my own personal knowledge.
5 If called to do so, I could and would testify to the matters contained herein.

6 1. The Small Business Administration is a federal agency that manages the Paycheck
7 Protection Program ("PPP"). The PPP provided liquidity to small businesses during the COVID-19
8 pandemic so that those businesses could cover their payroll expenses. Benworth, a licensed PPP lender,
9 provided such loans, mainly to minority-owned businesses with assistance from Womply. Womply
10 prepared and referred PPP loans to Benworth.

11 2. A dispute arose between Benworth and Womply, which resulted in the JAMS arbitration
12 styled *Oto Analytics, Inc. v. Benworth Capital Partners LLC*, JAMS Ref. No. 1210038203.

13 3. On December 21, 2024, the arbitrator issued an interim award. On May 30, 2024, the
14 Arbitrator issued his initial, final award. On June 26, 2024, the Arbitrator amended the final award (the
15 "Amended Final Award") to correct the award.

16 4. On July 1, 2024, Womply's counsel wrote to counsel for Benworth via email requesting
17 that Benworth accept service of the Petition and execute a waiver of the service of summons (the
18 "Waiver").

19 5. A true and correct copy of the proposed Waiver that counsel for Womply sent for
20 Benworth's acceptance is attached as **Exhibit 1**. It required a response to the Petition "60 days from
21 7/1/2024." Benworth accepted service of process in light of the 60-day period to respond to the Petition,
22 as reflected in Womply's counsel's email.

23 6. On July 18, 2024, Womply's counsel for the first time advised Benworth of its contention
24 that Benworth's response was due on July 19, 2024.

25 7. According to Womply, the Petition is a motion not subject to a Rule 12 response as
26 reflected in its waiver of summons form that Womply submitted to Benworth. Womply argued that
27

Benworth had fourteen days from the date it accepted service to respond to the Petition to Confirm— instead of the 60 days allowed by the Waiver that Womply proposed on July 1.

8. On July 18, 2024 (and continuing the following day), the parties conferred via email attempting to resolve this timing dispute.

9. Despite its prior agreement as reflected in the Waiver, Womply demanded a response to the Petition by July 23, 2024.

10. The parties entered into a stipulation which was filed with the Court, that no response will be due prior to July 23, 2024. ECF No. 24.

11. On July 22, 2024, Benworth invited Womply to confer via video conference in a final attempt to resolve this issue without the Court's involvement.

12. At that conference, the undersigned explained that (1) the Federal Arbitration Act ("FAA") precludes confirmation of an award if it is vacated, modified or corrected and (2) the FAA grants Benworth three months to petition a court to vacate the award.

13. The undersigned also explained Benworth's position: the FAA contemplates that a court will consider arguments for vacatur prior to confirming the award. Because the FAA provides for a three-month period to seek vacatur, requiring a response prior to the expiration of that period would conflict with the rights afforded Benworth under the FAA.

14. For these reasons, Benworth will suffer substantial prejudice if it is forced to respond prematurely to Womply's Petition.

15. Womply disagreed. According to Womply, the Court should hear the merits of its Petition now, confirm the award, and enter a judgment. Then, weeks later, when Benworth files its petition to vacate the award, the Court should again hear arguments on the merits of the underlying dispute and then consider whether to vacate the award, and its prior judgment.

16. Because the parties could not agree, a stipulation could not be obtained regarding the relief requested in Benworth's administrative motion. Nor was it possible to submit this or the prior stipulation

a week in advance because Womply never disclosed its position—that a time of less than 60 days existed for Benworth to submit its response to the Petition—until the day before the alleged deadline.

17. The following scheduling modification occurred in this case:

a. On July 16, the Court vacated the ADR and Rule 26 discovery deadlines set by the Initial Case Management Scheduling Order (ECF No. 20).

b. On July 22, the Court granted the parties' stipulation to extend Benworth's deadline to respond to Womply's Petition to July 23, 2024. (ECF No. 25).

18. No other schedule has been entered for the case

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this July 22, 2024, at Miami, Florida.

/s/ Dwayne A. Robinson
Dwayne A. Robinson

ATTESTATION

I, Simon S. Grille, am the ECF User whose identification and password are being used to file this Declaration of Dwayne A. Robinson, Esq. in Support of Benworth's Administrative Motion for Clarification of Deadline and/or Extension of Time to Respond to Womply's Petition Pursuant to Civil L.R. 5-1(i)(3), I attest under penalty of perjury that concurrence in this filing has been obtained from counsel.

/s/ Simon S. Grille
Simon S. Grille