

1 WILLKIE FARR & GALLAGHER LLP
2 Joshua S. Levy (admitted *pro hac vice*)
3 jlevy@willkie.com
4 1875 K Street, N.W.
Washington, DC 200066-1238
Telephone: (202) 303-1147

5 *Attorney for Petitioner*
6 Oto Analytics, LLC
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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
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17 OTO ANALYTICS, LLC,
18 Petitioner,
19 v.
20 BENWORTH CAPITAL PARTNERS LLC,
21 Respondent.
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Case No. 3:24-cv-03975-AMO

DECLARATION OF JOSHUA S. LEVY

Hon. Araceli Martínez-Olguín

1 I, Joshua S. Levy, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I am a member in good standing of the bars of Washington, D.C. and New York,
3 am admitted *pro hac vice* in the United States District Court for the Northern District of
4 California, and am an attorney at Willkie Farr & Gallagher LLP (“Willkie Farr”), counsel for
5 Petitioner Oto Analytics, LLC (“Womply”).

6 2. I respectfully submit this declaration to provide this Court with certain materials
7 cited in Womply’s Opposition to Benworth Capital Partners LLC’s (“Benworth”) Administrative
8 Motion for Clarification of Deadline and/or for Extension of Time to Respond to Womply’s
9 Petition to Confirm Arbitration Award and Entry for Judgment (“Motion”; ECF No. 26) and,
10 pursuant to Civil Local Rule 6-3(b), to set forth the basis for Womply’s Opposition to Benworth’s
11 Motion. This declaration is based on my personal knowledge or information provided to me.

12 3. On July 1, 2024, Womply filed in this Court a Petition to Confirm Arbitration
13 Award and for Entry of Judgment (“Petition”; ECF No. 1). That same day, I emailed Benworth’s
14 counsel the Petition and accompanying filings. Willkie Farr also emailed Benworth’s counsel a
15 File Transfer Protocol (“FTP”) link to download the Petition and accompanying filings. Willkie
16 Farr’s records show that, on July 2, 2024, Farola Saint-Remy, a paralegal employed by
17 Benworth’s counsel, accessed and downloaded the Petition and accompanying filings from the
18 FTP link. Attached hereto as Exhibit 1 is a true and correct copy of the email thread between
19 Womply’s counsel and Benworth’s counsel, dated July 1, 2024 to July 8, 2024, and
20 accompanying attachment.

21 4. On July 1 and July 3, 2024, I emailed Benworth’s counsel to ask whether they
22 would accept service of the Petition on behalf of Benworth. I attached to my emails a copy of
23 form AO 339 (019/09) Waiver of the Service of Summons (the “Form”), which Willkie Farr
24 downloaded from this Court’s public website. The Form contains certain fillable text boxes for
25 party and counsel identifying information and the date of service, which Willkie Farr filled in.
26 The remainder of the Form is not editable, and Willkie Farr did not edit it. Attached hereto as
27 Exhibit 2 is a true and correct copy of the email thread between Womply’s counsel and
28 Benworth’s counsel, dated July 1, 2024 to July 3, 2024, and accompanying attachment.

1 5. On July 2, 2024, Willkie Farr mailed paper copies of the Petition and
2 accompanying filings via Federal Express to Benworth's counsel's office and to Benworth's
3 registered agent.

4 6. On July 3, 2024, Benworth's counsel emailed me asking whether I "agree to accept
5 service on our petition to vacate the award." (Ex. 1.) I responded that "[w]e will agree to accept
6 service of Benworth's petition to vacate the arbitration award if you will accept service of
7 Womply's petition to confirm the arbitration award." (*Id.*) Benworth's counsel replied: "Change
8 it to my name, date it for Friday, July 5 and I will sign and return." (*Id.*) Willkie Farr did so and,
9 on July 8, 2024, Benworth's counsel emailed me the executed Form. (*Id.*)

10 7. On July 12, 2024, Willkie Farr emailed Benworth's counsel certain filings, orders,
11 and forms in this action, including Womply's Notice of Hearing. On July 16, 2024, Willkie Farr
12 emailed Benworth's counsel additional filings in this action, including this Court's text orders
13 and notices. Attached hereto as Exhibit 3 is a true and correct copy of the email thread between
14 Womply's counsel and Benworth's counsel, dated July 12, 2024 to July 19, 2024.

15 8. On July 17, 2024 Benworth's counsel emailed me that "[w]e noticed that you all
16 filed a notice of hearing for August 8th on Womply's petition to confirm. We are requesting that
17 this hearing is postponed. As you know, the time to submit our answer to the petition is not due
18 until after the hearing: on September 3rd." (Ex. 3.) On July 18, 2024, I responded that "the case
19 was reassigned to a different judge and all hearing dates 'are vacated' and 'must be renoticed for
20 hearing' before the new judge, so no need to worry about the hearing date. The Court noted that
21 the 'due date for any opposition or reply papers not yet filed shall be calculated in accordance
22 with Civil Local Rule 7-3.' I've re-attached the Court's Order and Notice for your convenience,
23 which we sent you on Tuesday." (*Id.* (citations omitted).) Two minutes later, Benworth's
24 counsel acknowledged receipt of my email. (*Id.*)

25 9. Later on July 18, 2024, I emailed Benworth's counsel stating that "[t]o ensure
26 there's no confusion, our Petition is a motion so, as the Court noted, the 'due date for any
27 opposition or reply papers not yet filed shall be calculated in accordance with Civil Local Rule
28 7-3,' which provides 14 days to file any opposition. Because Benworth accepted service effective

1 July 5, your opposition is due tomorrow.” (Ex. 3.) Benworth’s counsel responded that “[y]es, I
2 think there is confusion. Will you agree to an enlargement, assuming that you are correct?” (*Id.*)
3 When Benworth asked for an extension until September 3rd, I responded that “[w]e do not agree
4 to the more than 6-week delay that you are requesting. As I am sure you know, proceedings to
5 confirm an arbitration award are summary in nature, and Womply has been litigating against
6 Benworth for more than three years. There is no reason to further delay these proceedings.
7 Benworth has had ample time to draft papers seeking to vacate the award. Indeed, it has had the
8 interim award for more than seven months. Nevertheless, as a courtesy, we will agree to an
9 extension to Tuesday, July 23, for you to put in a response to our petition, but we cannot agree
10 to further delay.” (*Id.*) Benworth’s counsel and I then negotiated a stipulation to extend
11 Benworth’s deadline to respond to the Petition to July 23, 2024. (*Id.*)

12 I declare under penalty of perjury under the laws of the United States that the foregoing
13 is true and correct.

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15 Executed this 26th day of July 2024 in New York, New York.

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17 By: /s/ Joshua S. Levy
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