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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-3975-AMO

**BENWORTH'S RESPONSE IN
OPPOSITION TO WOMPLY'S
ADMINISTRATIVE MOTION TO SEAL**

Pursuant to Civil Local Rules 7-11 and 79-5, Respondent Benworth Capital Partners, LLC (“Benworth”) hereby responds to Petitioner Oto Analytics, LLC’s (“Womply[’s]”) Administrative Motion to File Under Seal portions of its Motion to Confirm Arbitration Award and Exhibits 9 & 10 to the Declaration of Alexander L. Cheney filed in support of that motion (“Motion to Seal”). Exhibit 9 is Benworth’s Motion to Disqualify the arbitrator and Exhibit 10 is Womply’s Opposition to the Motion to Disqualify.

Benworth submits this response in opposition to placing these materials under seal because doing so would violate the public’s right of access to the courts and needlessly burden the Court and its staff with sealed materials. Benworth’s position is that any arbitration materials that the parties intend to rely on in these public proceedings should be unsealed. On August 7, 2024, Benworth filed under seal the appendices to its Petition to Vacate in the related action styled *Benworth v. Womply*, Case No. 3:24-cv-4840 (N.D. Cal) (the “Vacatur Action”) at ECF No. 3. Benworth did so out of an abundance of caution to avoid violating the confidentiality associated with the arbitration. However, the parties are conferring on which of these materials, if any, should be sealed. *See Vacatur Action*, ECF No. 21 at 6:2-3.

In the instant case, Womply filed its corrected motion to confirm the arbitration award (the “Motion to Confirm”) on August 20, 2024. ECF No. 41. The sections of the Motion to Confirm (and the associated Exhibits 9 & 10) that Womply now seeks to seal discuss Benworth’s motion to disqualify the arbitrator and Womply’s response (the “Disqualification Issue”). ECF No. 42-2-4. Because the Motion to Confirm was filed thirteen days after Benworth filed its petition in the Vacatur Action, Womply knew well in advance of filing the Motion to Confirm that Benworth would not be seeking vacatur based on the Disqualification Issue. Therefore, it is puzzling that Womply would choose to discuss the Disqualification Issue in its Motion to Confirm. In any event, if Womply wishes to do so, it cannot hide its filing from the public view.

The Ninth Circuit recognizes “a strong presumption in favor of access to court records.” *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) “A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard.” *Ctr. for Auto Safety*, 809 F.3d at 1096–97 (quoting *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006)). “What constitutes a compelling reason is best left to the

1 sound discretion of the trial court.” *Id.* at 1097 (cleaned up). Importantly, when considering whether there
 2 are compelling reasons to seal, a court must be able to “articulate the factual basis for its ruling, without
 3 relying on hypothesis or conjecture.” *Id.* at 1096–97 (cleaned up). In any event, this is a “stringent
 4 standard” because there is a “strong preference for public access.” *Id.*

5 There is no legal basis for Womply’s request to seal the information underlying Benworth’s
 6 motion to disqualify the arbitrator. Womply argues that the Court should seal the information dealing
 7 with the Disqualification Issue to protect the arbitrator’s reputation. *See* Motion to Seal, ECF No. 42 at
 8 3:10-11. However, Womply does not explain how the public’s access to information discussing the
 9 Disqualification issue will damage the arbitrator’s reputation. Instead, Womply relies on conclusory
 10 statements without discussing the merits of the disqualification motion. *See* Motion to Seal, ECF No. 42
 11 at 3:16-18. Womply cannot be allowed to declare in the public record that Benworth’s disqualification
 12 motion was unfounded and yet shield from the public what those allegations were.

13 Importantly, Womply’s Motion makes it impossible for the Court to articulate the factual basis to
 14 seal this information without relying on hypothesis or conjecture. Womply does not specifically explain
 15 how the arbitrator’s reputation will be damaged if the Disqualification Issue is unsealed. Instead, Womply
 16 relies on its conjecture that “[p]ublicly disclosing these allegations **raises the danger** that the court **could**
 17 **become** a partner in the use of arbitration material to gratify private spite or promote public scandal . . .
 18 .” *See* Motion to Seal, ECF No. 42 at 3:20-22 (cleaned up, emphasis added). Without more, this is not
 19 enough to overcome the “strong presumption in favor of access to court records.” *Ctr. for Auto Safety*,
 20 809 F.3d at 1096.

21 As noted above, there is no need for Womply to raise the Disqualification Issue in its Motion
 22 because Benworth has not raised that as a ground for vacatur. Accordingly, if Womply is truly worried
 23 about protecting the arbitrator’s reputation, it can modify its Motion to Confirm to exclude the
 24 Disqualification Issue. Womply cannot, however, chastise Benworth for seeking to disqualify the
 25 arbitrator while at the same time hide from the public the reasons why Benworth sought disqualification
 26 in the first place.
 27
 28

1 Dated: August 26, 2024

2 Respectfully submitted,

3 /s/ Dwayne A. Robinson

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

Dated: August 26, 2024

/s/ Simon S. Grille
Simon S. Grille