

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. 23-01034

**MOTION FOR EXTENSION OF TIME TO SERVE DEFENDANTS BERNARDO
NAVARRO AND CLAUDIA NAVARRO AND LEAVE TO SERVE BY PUBLICATION**

Pursuant to Federal Rules of Civil Procedure 4(e)(1) and 4(m), Plaintiff Oto Analytics, LLC (f/k/a Oto Analytics, Inc., d/b/a Womply, “**Womply**”), through the undersigned counsel, respectfully requests that this Court (i) extend Womply’s time to serve Defendant Bernardo Navarro (“**Mr. Navarro**”) and Defendant Claudia Navarro (“**Ms. Navarro**,” together with Mr. Navarro, the “**Navarros**”) by 120 days, or 30 days after this Court rules on this Motion (whichever is later); and (ii) grant Womply leave to serve the Navarros by publication.

As Womply explained in detail in its Opposition to the Navarros’ Motion to Quash Service of Process and accompanying exhibits (“**Opp.**”; ECF No. 54), Womply has served or attempted to serve the Navarros eight times at three different addresses, including at (i) the offices of Benworth Capital Partners PR LLC, which is wholly owned by the Navarros, where service was accepted by the Office Administrator;¹ (ii) the Puerto Rico home address listed on the Navarros’ drivers’

¹ Womply contends that it effected service upon the Navarros by serving the Office Administrator, who represented that she had the authority to accept service on their behalf. (Opp. at 3.) Nevertheless, Womply brings this motion in the event that the Court determines that the Navarros have not yet been served.

licenses and on their bank account application; and (iii) the Navarros' last known home address in Florida. (Opp. at 1–5 & Exs. 2, 6–7; ECF Nos. 22–24.) There can be no serious dispute that the Navarros have actual notice of this action—they both submitted declarations (ECF Nos. 37-1, 37-2) and their respective attorneys have filed multiple briefs (ECF Nos. 25, 26, 37, 59, 64)—which strongly supports Womply's argument that the Navarros have been validly served (*see* Opp. at 6–7). Womply has also requested that, in the alternative, this Court grant Womply leave to serve the Navarros by publication. (*Id.* at 7–8.)

Out of an abundance of caution, and to avoid any procedural ambiguities, Womply now formally moves to extend the time to serve the Navarros by 120 days, or 30 days after this Court rules on this Motion (whichever is later), and for leave to serve the Navarros by publication. Rule 4(m) requires service “within 90 days after the complaint is filed” and provides that “if the plaintiff shows good cause for the failure [to serve defendant within 90 days], the court *must* extend the time for service for an appropriate period” (emphasis added). Good cause exists where “the plaintiff has acted diligently in trying to effect service” or “the defendant has evaded service of the process or engaged in misleading conduct.” *Moreno-Perez v. Toledo-Davila*, 266 F.R.D. 46, 49–50 (D.P.R. 2010) (cleaned up; collecting cases); *see also* 4B Charles S. Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 1137 (4th ed. 2023) (“**Wright & Miller**”). “Even if there is not good cause shown,” the court may “in its discretion decide[] to grant the plaintiff more time to effect service.” *Moreno-Perez*, 266 F.R.D. at 49 (cleaned up); *see also* 4B Wright & Miller § 1137 & n.13 (“the overwhelming majority of federal courts and dicta from the Supreme Court embrace the view” that “an extension of time is allowed without a showing of good cause”) (collecting cases).

Womply easily satisfies the good-cause requirement. The Navarros and their counsel repeatedly refused to accept service, forcing Womply to engage process servers who served or attempted to serve the Navarros eight times at three different addresses. (*See* Opp. at 1–6.) Courts routinely extend the time to serve defendants, even after the 90-day deadline has passed, where, as here, the plaintiff “made reasonable efforts to serve the summons within the time limit noted in Rule 4(m).” *Moreno-Perez*, 266 F.R.D. at 50 (vacating dismissal for failure to serve within applicable time period); *see also, e.g., Valle-Vega v. Valle-Vega*, 2021 WL 5750585, at * (D.P.R. 2021) (extending time to serve defendant after the “time to serve him, pursuant to Rule 4(m), already lapsed,” because plaintiff “made good faith efforts to ascertain where to service” defendant); 4B Wright & Miller § 1137 n.6 (collecting cases).

Under Rule 4(e)(1), an individual may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located where service is made.” Puerto Rico law provides that “[t]he court *shall* issue an order providing for summons by publication” in a “newspaper of general circulation in Puerto Rico” where “the person to be served . . . could not be located even after pertinent efforts have been made” and the movant provides “an affidavit stating the efforts made.” *Calderón Serra v. Banco Santander P.R.*, 747 F.3d 1, 8 (1st Cir. 2014) (emphasis added) (quoting P.R. Law Ann. Tit. 32, app. V, R. 4.6).² Womply has submitted multiple declarations showing Womply’s extensive efforts to serve the Navarros, including detailed declarations by multiple process servers based on first-hand knowledge, an attorney declaration describing document and public records searches,

² Puerto Rico law is considered “state law” for purposes of Rule 4(e)(1). *See Calderón Serra*, 747 F.3d at 8. Under the 2020 amendments to the Puerto Rico Civil Code, which have not yet been translated, former Rule 4.6 was restyled as Rule 4.5 but was not substantively changed. P.R. Law Ann. tit. 32, app. V, R. 4.5.

and a lengthy declaration from Womply’s CEO setting forth the factual basis for Womply’s claims. (Ex. 1 (ECF No. 23), Ex. 2 (ECF No. 24), Ex. 3 (ECF No. 54-1), Ex. 4 (ECF No. 54-3), Ex. 5 (ECF No. 54-7), Ex. 6 (ECF No. 54-8), Ex. 7 (ECF No. 54-12).) This is more than sufficient to warrant service by publication. *See, e.g., id.* at 8–9 (affirming service by publication based on a single affidavit showing “last known address”); *see also Hasebrouck v. Great Lengths Int’l*, 2008 WL 11502476, at *1 (D.P.R. Mar. 27, 2008) (“The Puerto Rico court authorized service by publication”); *Live Well Fin., Inc. v. Estate of Santana Martinez*, 2020 WL 12188413, at *1 (D.P.R. Jan. 14, 2020) (granting plaintiff additional time “to serve process . . . by publication”); *Farb v. Perez-Riera*, 293 F.R.D. 77, 79 (D.P.R. 2013) (“grant[ing] Plaintiff an additional term of ten days to correctly serve Perez Riera through publication”).

Accordingly, Womply respectfully requests that this Court (i) extend Womply’s time to serve the Navarros by 120 days, to August 22, 2023, or (if later) to 30 days after this Court rules on this Motion; and (ii) grant Womply leave to serve the Navarros by publication.

Dated: June 12, 2023

Respectfully submitted,

By: /s/ Alexander L. Cheney

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 12, 2023, the foregoing document was filed with the Clerk of the Court using CM/ECF, which sent notices to all parties receiving notifications through the CM/ECF system.

Dated: June 12, 2023

By: /s/ Alexander L. Cheney

Attorney for Plaintiff Oto Analytics, LLC