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Oto Analytics, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

OTO ANALYTICS, LLC, Petitioner, v. BENWORTH CAPITAL PARTNERS LLC, Respondent.	Case No. 3:24-cv-03975-AMO **NOTICE OF MOTION AND MOTION TO CONSOLIDATE RELATED CASES** Hearing Date: January 9, 2025 Time: 2:00 p.m. Courtroom: 10, 19th Floor Judge: Hon. Araceli Martínez-Olguín

NOTICE OF MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Petitioner Oto Analytics, LLC (f/k/a Oto Analytics, Inc., d/b/a Womply) ("Womply") will and hereby moves this Court for an order consolidating *Oto Analytics, LLC v. Benworth Capital Partners LLC*, Civil No. 3:24-cv-03975-AMO (N.D. Cal.) (the "Confirmation Action"), and *Benworth Capital Partners LLC v. Oto Analytics, LLC*, Civil No. 3:24-cv-4840-AMO (N.D. Cal.) (the "Vacatur Action"). Womply will and hereby does notice this Motion for hearing on January 9, 2025, at 2:00 p.m. (or as soon thereafter as it may be heard), in Courtroom 10 of the Northern District of California, located at 450 Golden Gate Ave., San Francisco, CA 94102. Womply does not believe a hearing is necessary because both parties have agreed to consolidate the above-referenced actions, but respectfully leaves that decision to this Court's discretion.

Pursuant to Federal Rule of Civil Procedure 42(a), Womply respectfully requests that this Court consolidate the Confirmation Action, which has been pending before this Court since July 1, 2024, and the Vacatur Action, which has been pending before this Court since August 7, 2024, and was reassigned to Judge Araceli Martínez-Olguín pursuant to her order dated August 15, 2024 (ECF No. 39). These two cases involve the same parties, the same common facts, the same underlying arbitration, and this Court has already held that they are related. Accordingly, consolidation will promote just and efficient litigation in both Actions by streamlining scheduling, filings, and hearings and will also avoid the risk of inconsistent adjudication of the same issues raised during the course of the proceedings in both Actions. Benworth Capital Partners LLC ("Benworth") has consented to consolidation.

Womply's Motion is based on this Notice of Motion, the accompanying Declaration of Alexander L. Cheney in support of the Motion and the exhibits thereto, and such other argument and evidence as may be presented at or prior to the hearing.

Dated: August 29, 2024

WILLKIE FARR & GALLAGHER LLP

By: */s/ Alexander L. Cheney*
Alexander L. Cheney
Stuart R. Lombardi
Joshua S. Levy

Attorneys for Petitioner
Oto Analytics, LLC

MOTION TO CONSOLIDATE RELATED CASES

Pursuant to Federal Rule of Civil Procedure 42(a), Womply files this Motion to Consolidate Related Cases *Oto Analytics, LLC v. Benworth Capital Partners LLC*, Civil No. 3:24-cv-03975-AMO (N.D. Cal.), and *Benworth Capital Partners LLC v. Oto Analytics, LLC*, Civil No. 3:24-cv-4840-AMO (N.D. Cal.) (together, the "Actions").

"If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). This Court may also "join for hearing or trial any or all matters at issue in the actions," or "issue any other orders to avoid unnecessary cost or delay." *Id.* "In determining whether or not to consolidate cases, the Court should weigh the interest of judicial convenience against the potential for delay, confusion and prejudice." *Bodri v. Gopro, Inc.*, 2016 WL 1718217, at *1 (N.D. Cal. Apr. 28, 2016) (quoting *Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010)). District Courts have "broad discretion in determining whether consolidation is appropriate, [and] typically, consolidation is favored." *Ho Keung Tse v. Apple, Inc.*, 2013 WL 451639, at *3 (N.D. Cal. Feb. 5, 2013).

The Actions easily satisfy the requirements of Rule 42(a) and should be consolidated. The Confirmation Action seeks to confirm an arbitration award between Womply and Benworth, which Benworth opposes, and the Vacatur Action seeks to vacate the same arbitration award, which Womply opposes. Under the Federal Arbitration Act, the grounds on which a party can oppose confirmation of an arbitration award are the same grounds on which it can move to vacate an arbitration award. *See* 9 U.S.C. §§ 9–10. Thus, the Actions raise the same questions of law and fact between the same parties regarding the same arbitration award. For these reasons, this Court has already held that the Actions are related. (ECF No. 39.) For the same reasons, it should also consolidate the Actions, which will promote judicial economy by permitting a single order addressing both confirmation and vacatur and will avoid the delay and inefficiency resulting from two separate actions about the same issues. *See Hernandez v. Smart & Final.*, 2010 WL 2505683, at *2 (S.D. Cal. June 17, 2010) (ordering the consolidation of the confirmation action and the vacatur action before granting the petition to confirm the arbitration award). This will not result in any prejudice because Benworth has consented to consolidation. (Declaration of Alexander L. Cheney ¶ 4; *id.* at Exhibit 1.)

For the foregoing reasons, this Court should consolidate the Confirmation Action and Vacatur Action.

Dated: August 29, 2024

WILLKIE FARR & GALLAGHER LLP

By: */s/ Alexander L. Cheney*
Alexander L. Cheney
Stuart R. Lombardi
Joshua S. Levy

Attorneys for Petitioner
Oto Analytics, LLC