

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15271

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

TOBY G. SCAMMELL,

Respondent.

SUPPLEMENTAL DECLARATION
OF CHARLENE KOSKI IN
SUPPORT OF RESPONDENT'S
MOTION FOR SUMMARY
DISPOSITION

SUPPLEMENTAL DECLARATION OF CHARLENE KOSKI IN SUPPORT OF TOBY
G. SCAMMELL'S MOTION FOR SUMMARY DISPOSITION

I, Charlene Koski, declare:

1. I am admitted to practice law before the highest court of the State of Washington. I am an associate with the law firm Wilson Sonsini Goodrich & Rosati, P.C. ("WSGR") and represent Respondent Toby G. Scammell in this proceeding. I submit this Supplemental Declaration in Support of Respondent's Motion for Summary Disposition. I have personal knowledge of the facts set forth in this declaration.
2. Attached hereto as Exhibit 29 is a true and correct copy of an email string between Mark Pearlstein and Theresa Melson dated May 2-3, 2011.
3. Attached hereto as Exhibit 30 are excerpts from true and correct copies of Oto Analytics, Inc., bank statements dated December 31, 2011 through January 31, 2012 and August 1 through August 31, 2012, bates-labeled Scammell_SEC 000126-000131 and 000168-000173.

4. Attached hereto as Exhibit 31 are excerpts from true and correct copies of Toby G. Scammell's bank statements dated July 23, 2009 through August 24, 2009.

5. After Toby provided the Division with bank records reflecting payments to his former counsel, William Kimball, the Division sought testimony from Mr. Kimball on the topic. The Division did not advise Toby or his current counsel that they had made such a request – which became a demand – on Mr. Kimball. Aware of the inappropriateness of seeking such testimony when the desired facts were likely not in dispute and could be obtained in other ways, current counsel sent a letter to the Division's attorneys offering to work with the Division to identify a means by which the Division could obtain the necessary information without requiring Toby's former counsel to give what the Division apparently believed would be testimony against his former client in the very matter in which he had represented him.

Attached hereto as Exhibit 32 is a true and correct copy of the June 17, 2013 letter from Leo P. Cunningham to David J. Van Havermaat. The Division did not respond, so Toby's current counsel sent emails on June 18, 20, 26, 27, and 28 (true and correct copies of which are attached hereto as exhibits 33 to 37) attempting to get a stipulation that would avoid the unseemliness of former counsel giving such testimony in an ongoing matter. That eventually culminated in the stipulation drafted by current counsel and executed on July 2, 2013 (which the Division attached as Van Havermaat Decl. Ex. 31).

6. Attached hereto as Exhibit 38 are excerpts from a true and correct copy of the deposition transcript of Toby G. Scammell taken on July 30, 2010.

7. Attached hereto as Exhibit 39 are excerpts from a true and correct copy of the deposition transcript of Toby G. Scammell taken on September 16, 2010.

8. Attached hereto as Exhibit 40 are excerpts from a true and correct copy of the deposition transcript of Toby G. Scammell taken on November 5, 2010.

9. Attached hereto as Exhibit 41 are excerpts from a true and correct copy of the deposition transcript of [REDACTED] taken on March 18, 2010.

10. Attached hereto as Exhibit 42 are excerpts from a true and correct copy of the deposition transcript of [REDACTED] taken on March 12, 2010.

11. Attached hereto as Exhibit 43 are excerpts from a true and correct copy of the deposition transcript of [REDACTED] taken on July 22, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2013 in Seattle, Washington.



Charlene Koski