

Daniel C. Girard (State Bar No. 114826)

dgirard@girardsharp.com

Simon S. Grille (State Bar No. 294914)

sgrille@girardsharp.com

GIRARD SHARP LLP

601 California Street, Suite 1400

San Francisco, CA 94108

Telephone: (415) 981-4800

Jorge L. Piedra (Florida Bar No. 88315)

(*Pro Hac Vice*)

jpiedra@kttlaw.com

Dwayne A. Robinson (Florida Bar No. 99976)

(*Pro Hac Vice*)

drobinson@kttlaw.com

Michael R. Lorigas (Florida Bar No. 123597)

(*Pro Hac Vice*)

mlorigas@kttlaw.com

KOZYAK TROPIN & THROCKMORTON

2525 Ponce de Leon Boulevard, 9th Floor

Miami, Florida 33134

Telephone: (305) 372-1800

Attorneys for Benworth Capital Partners, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BENWORTH CAPITAL PARTNERS LLC,

Petitioner,

v.

OTO ANALYTICS, LLC,

Respondent.

Case No. 3:24-cv-4840-AMO

ADMINISTRATIVE MOTION FOR *NUNC PRO TUNC* ENLARGEMENT OF PAGE LIMITS APPLICABLE TO BENWORTH'S PETITION TO VACATE FINAL ARBITRATION AWARD

Pursuant to Local Rules 7-2 and 7-11, Petitioner, Benworth Capital Partners, LLC (“Benworth”), seeks a *nunc pro tunc* enlargement of the page limits applicable to its Petition to Vacate Final Arbitration Award (ECF No. 1) (the “Petition to Vacate”), and states as follows:

1. Benworth filed its Petition to Vacate on August 7, 2024. The Petition to Vacate is 67 pages in length. Robinson Decl. at ¶ 2. Due to the complex nature of this dispute, the extensive record, and the demanding standard for vacating an arbitration award, the 25-page limit prescribed by Local Rule 7-2 is

insufficient for Benworth to adequately present its case for vacatur to the Court. Robinson Decl. at ¶ 3.

2. Respondent Oto Analytics, LLC f/k/a Oto Analytics, Inc. d/b/a Womply (“Womply”) expressed to Benworth that the Petition to Vacate violated the 25-page limit set forth in Local Rule 7-2. Robinson Decl. at ¶ 4.

3. In the related case, Womply filed a petition to confirm the same final arbitration award that is at issue here. *See* Petition to Confirm Arbitration Award, *Oto Analytics, LLC f/k/a Oto Analytics, Inc. d/b/a Womply v. Benworth Capital Partners, LLC*, Case No.3:24-cv-3975-AMO (N.D. Calif. Aug. 26, 2024), ECF No. 1 (the “*Confirmation Proceedings*”). A dispute arose between the Parties in the Confirmation Proceedings concerning Benworth’s deadline to respond to Womply’s petition to confirm. *See* Benworth’s Administrative Motion for Clarification of Deadline and/or for Extension of Time to Respond to Womply’s Petition, *Confirmation Proceedings*, ECF No. 26. This Court ruled that Benworth had no obligation to respond to the petition to confirm because it should have been filed and noticed as a ***motion***. *See* Order Re Administrative Motion for Clarification of Deadline, *Confirmation Proceedings*, ECF No. 40. (Benworth filed its Petition to Vacate ***before*** the Court entered this order.) The Court also noted that “it is currently setting motion hearings in January 2025” and reminded “the parties that their case may be resolved more quickly if they consent to magistrate judge jurisdiction.” *Id.* at 2.

4. Shortly thereafter, Womply informed Benworth that it would not move to strike the Petition to Vacate for being over page limits if Benworth consented to magistrate judge jurisdiction for the related cases. Robinson Decl. at ¶ 5. Womply, however, never moved to strike the Petition to Vacate even after Benworth did not accept its offer. *Id.*

5. Benworth proposed to Womply that the parties agree to consolidate briefing on the vacatur and confirmation proceedings and to extended pages limits for the consolidated briefing. Robinson Decl. at ¶ 6. Womply waited until just before it filed its opposition to the Petition to Vacate here (ECF No. 25) (the “*Opposition*”) to respond to Benworth’s proposal, contending the proposal was rendered moot by its *Opposition*. Robinson Decl. at ¶ 7.

6. Benworth then filed a motion in the related case to consolidate briefing on the vacatur and confirmation proceedings. *See* Administrative Motion for Enlargement of Page Limits Applicable to Respondent’s Cross-Motion to Vacate and for Extension of Time to Respond to Petitioner’s Motion to

Confirm, *Confirmation Proceedings*, ECF No. 46. This Court has not adjudicated that motion as of this filing. *See generally* Docket, *Confirmation Proceedings*. As such, and in the event this Court declines to consolidate the proceedings and/or briefing, the undersigned submits this motion for a *nunc pro tunc* enlargement of the page limits applicable to its Petition to Vacate in an abundance of caution. It remains Benworth’s preference to submit consolidated briefing and with tighter page limits—just not those that, at 25 pages, would prejudice Benworth in presenting the extensive federal regulations, contracts, and history related to the competing petitions.

7. Accordingly, and in the event this Court declines to consolidate proceedings and their briefing as proposed in the *Confirmation Proceeding*, Benworth requests that the Court grant a *nunc pro tunc* enlargement of the page limits to 67 pages. Doing so obviates the need for submission of a shorter Petition to Vacate, a new response, and briefing on reply in the event the Court declines the administrative motion pending in the *Confirmation Proceeding*.

8. Benworth requests the *nunc pro tunc* enlargement of page limits to 67 pages so that it may adequately present its case for vacatur to the Court. The Federal Arbitration Act provides limited grounds to vacate an arbitration award. One of those grounds is that the arbitrator exceeded his powers by manifestly disregarding the law. *Aspic Eng’g & Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1166 (9th Cir. 2019). Ninth Circuit precedent establishes that “an arbitrator’s failure to recognize undisputed, legally dispositive facts may properly be deemed a manifest disregard for the law.” *Coutee v. Barington Cap. Grp., L.P.*, 336 F.3d 1128, 1133 (9th Cir. 2003). Although courts generally “must defer to an arbitrator’s conclusions even where they are erroneous[.]” an “arbitrator’s conclusions” are not “entitled to the deference ordinarily accorded” and do “not bind” this Court where, like here, an award is legally irreconcilable with the undisputed facts. *Am. Postal Workers Union v. U.S. Postal Serv.*, 682 F.2d 1280, 1284–85 (9th Cir.1982), *cert. denied*, 459 U.S. 1200 (1983).

9. Although Benworth raises two additional grounds authorized by binding precedent to vacate the arbitration award, the bulk of the Petition to Vacate is dedicated to arguments showing that the arbitrator manifestly disregarded the law by failing to recognize the undisputed, legally dispositive facts. To meet the demanding standard for vacatur, Benworth must survey the relevant undisputed facts in detail—which are set forth in a record containing over 4,000 pages of documentary, photographic, and video evidence—

and do so in the context of hundreds of pages of SBA SOPs, rules, and regulations as well as the 73-page final arbitration award. Robinson Decl. ¶ 8. Benworth thus requires more than 25 pages to adequately meet such a demanding standard.

10. Granting the requested relief will not prejudice Womply. Womply already admitted as much when it proposed to waive filing a motion to strike the Petition to Vacate for being over pages limits if Benworth consented to magistrate judge jurisdiction. And Womply already filed its Opposition without asking the Court for an enlargement of page limits or to strike, in whole or in part, the Petition to Vacate.

11. The undersigned met and conferred with counsel for Womply regarding the requested relief. Robinson Decl. at ¶ 9. Womply objects to the requested relief because it believes Benworth should have sought this relief closer in time to when Womply accepted service of the Petition to Vacate. *Id.*

WHEREFORE, Petitioner, Benworth Capital Partners, LLC respectfully requests that the Court grant a *nunc pro tunc* enlargement of the page limits applicable to the Petition to Vacate to 67 pages.

Dated: August 29, 2024

/s/ Dwayne A. Robinson

Dwayne A. Robinson (Florida Bar No. 99976)
(*Pro Hac Vice*)

drobinson@kttlaw.com

Jorge L. Piedra (Florida Bar No. 88315)
(*Pro Hac Vice*)

jpiedra@kttlaw.com

Michael R. Lorigas (Florida Bar No. 123597)
(*Pro Hac Vice*)

mlorigas@kttlaw.com

KOZYAK TROPIN & THROCKMORTON

2525 Ponce de Leon Boulevard, 9th Floor

Miami, Florida 33134

Telephone: (305) 372-1800

Daniel C. Girard (State Bar No. 114826)

dgirard@girardsharp.com

Simon S. Grille (State Bar No. 294914)
sgrille@girardsharp.com

GIRARD SHARP LLP

601 California Street, Suite 1400

San Francisco, CA 94108

Telephone: (415) 981-4800

*Attorneys for Petitioner Benworth Capital Partners,
LLC*

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 29, 2024

/s/ Simon S. Grille
Simon S. Grille