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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENWORTH CAPITAL PARTNERS LLC,

Petitioner,

v.

OTO ANALYTICS, LLC,

Respondent.

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

**RESPONSE TO PETITIONER'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5(f), Respondent Oto Analytics, LLC (f/k/a Oto Analytics, Inc., d/b/a Womply) (“Womply”) respectfully submits this Response To Petitioner’s Administrative Motion To Consider Whether Another Party’s Material Should Be Sealed (the “Response”).

INTRODUCTION

Petitioner Benworth Capital Partners LLC’s (“Benworth” or “Petitioner”) Administrative Motion To Consider Whether Another Party’s Material Should Be Sealed (ECF No. 3, “Mot.” or “Motion”) fails to comply with Civil Local Rule 79-5(a), which requires that a party filing documents under seal first “explore all reasonable alternatives to filing documents under seal, minimize the number of documents filed under seal, and avoid wherever possible sealing entire documents (as opposed to merely redacting the truly sensitive information in a document).” Benworth did none of that. Instead, Benworth filed under seal its entire appendix of over **1,900 pages**—including government regulations and other publicly available information—and its Motion seeks to shift the burden of evaluating whether any of them contain confidential information to Womply. That is the type of gamesmanship that Civil Local Rule 79-5(a) is intended to prevent. In hopes to avoid burdening the Court with the matter, the parties are meeting and conferring in an effort to agree on a narrower sealing request. In the event those efforts fail, for the reasons discussed herein, Womply reserves the right to request that the Court issue an order requiring that Benworth submit an amended appendix and new motion to seal in compliance with Civil Local Rule 79-5(a), or, in the alternative, grant Womply an extension of 30 days to respond with particularity to Benworth’s Motion.

As explained below, in a related action, Womply filed a petition to confirm an arbitral award finding that Benworth owes Womply more than \$118 million. Instead of substantively responding to Womply’s petition, Benworth commenced this new action by filing its own petition to vacate the same award under the Federal Arbitration Act (the “FAA”)—but that petition violates this Court’s rules. Under the FAA, a petition to vacate an arbitration award is treated as a motion and therefore, under Civil Local Rule 7-2(b), has a page limit of 25 pages. This is consistent with this Court’s

precedent stating that an action to confirm or vacate an arbitral award is summary in nature, and the grounds on which a Court may vacate an arbitral award are very narrow. Disregarding all of this, Benworth's petition spans **67 pages** and effectively seeks *de novo* review of the arbitrator's legal conclusions and factual findings with which Benworth disagrees.

The parties are meeting and conferring in the hopes of resolving this issue without Court intervention.

BACKGROUND

In August 2021, Womply commenced the JAMS arbitration styled *Oto Analytics, Inc. d/b/a Womply v. Benworth Capital Partners, LLC*, JAMS Ref. No. 1210038203 (the "Arbitration"). After nearly three years, the arbitrator issued a Corrected Final Award on June 26, 2024. On July 1, 2024, Womply filed a petition to confirm the Corrected Final Award (the "Final Award") in the United States District Court for the Northern District of California. *See Oto Analytics, LLC v. Benworth Capital Partners LLC*, No. 3:24-cv-03975, ECF No. 1 (N.D. Cal. July 1, 2024).

On August 7, Benworth commenced this new action (the "Action") by filing a 67-page Notice Of Petition And Petition to Vacate Final Arbitration Award (ECF No. 1, the "Petition"). In support of the Petition, Benworth filed under seal an appendix containing more than 1,900 pages of documents from the Arbitration (ECF Nos. 1-1-1-57, collectively, the "Appendix"). Benworth simultaneously filed an Administrative Motion To Consider Whether Another Party's Material Should Be Sealed (the "Motion"). The Motion contends that Benworth's Petition and Appendix contain certain information that Womply "has claimed or may claim is confidential" and that "Womply has the burden to justify its claims of confidentiality and to establish that the designated information is sealable." (Mot. at 1.) On August 8, 2024, Benworth sent Womply electronic copies of its unredacted Petition and an unsealed copy of its Appendix. Womply accepted service of Benworth's Petition and the Motion on August 12, 2024. (ECF No. 8.)

ARGUMENT

Civil Local Rule 79-5(a) requires that parties filing documents under seal first "explore all reasonable alternatives to filing documents under seal, minimize the number of documents filed

1 under seal, and avoid wherever possible sealing entire documents (as opposed to merely redacting
2 the truly sensitive information in a document).”

3 Benworth appears to have made *no effort* to explore any alternatives, minimize the number
4 of documents filed under seal, or avoid filing entire documents under seal. It simply filed *all* of the
5 documents in its Appendix in support of its Petition—totaling more than 1,900 pages—under seal.
6 Benworth’s disregard of the rules is egregious given that some of the documents in its Appendix
7 plainly are not confidential. Indeed, Benworth’s sealed Appendix includes (i) documents that are
8 publicly available on the U.S. Small Business Administration’s (“SBA”) website (*see, e.g., App.*
9 *3258–3847*), (ii) blank application forms for the Paycheck Protection Program (*see App. 3960–*
10 *3973*),¹ and (iii) copies of regulations published by the federal government (*see App. 3848–3868*).
11 It also includes an interim arbitral award (*App. 2902–56*), an uncorrected final award (*App. 3112–*
12 *84*), and the Final Award (*App. 3185–3257*) that have all been filed publicly, albeit with some
13 redactions, in separate proceedings Womply commenced against Benworth. *See Oto Analytics, LLC*
14 *v. Benworth Capital Partners PR LLC, et al.*, No. 3:23-cv-01034, ECF Nos. 99-1 (D.P.R. Dec. 26,
15 2023), 107-1 (D.P.R. June 12, 2024); *Oto Analytics, LLC v. Benworth Capital Partners LLC*, No.
16 3:24-cv-03975, ECF No. 1-4 (N.D. Cal. July 1, 2024).

17 Benworth’s violation may be explained in part by Benworth’s failure to comply with the
18 Civil Local Rule governing page limits for the Petition. It is black-letter law that petitions to confirm
19 or vacate an arbitration award are treated as motions, not pleadings. 9 U.S.C. § 6 (“Any application
20 to the court hereunder shall be made and heard in the manner provided by law for the making and
21 hearing of *motions*.”) (emphasis added); *see also S.W. Reg’l Council of Carpenters v. T.J. Hale Co.*,
22 2010 WL 11597957, at *1, *3 (C.D. Cal. June 16, 2010) (treating petition to confirm arbitration
23 award as a “motion to confirm”) (citing 9 U.S.C. §§ 6, 9). This treatment makes sense given that
24 “[t]he confirmation of an arbitration award is meant to be a summary proceeding.” *Int’l Petroleum*

25 _____
26 ¹ The SBA SOP can be found publicly on the SBA’s website at the following URL:
27 <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs>. PPP
28 application forms can be found at the following URL: <https://www.sba.gov/document/sba-form-2483-ppp-first-draw-borrower-application-form>.

1 *Prods. & Additive Co. v. Black Gold, S.A.R.L.*, 418 F. Supp. 3d 481, 487 (N.D. Cal. 2019) (citing
 2 *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1105 (9th Cir. 2003)). Womply has repeatedly
 3 notified Benworth that petitions under the FAA are treated as motions and therefore subject to the
 4 25-page limit under Civil Local Rule 7-2(b). Nevertheless, Benworth filed a 67-page Petition,
 5 exceeding the page limits under Civil Local Rule 7-2(b) by 42 pages.² Had Benworth complied
 6 with the page limits, it is unlikely it would have needed to submit an Appendix of more than 1,900
 7 pages to support its Petition.

8 Another explanation for Benworth’s failure to comply with Civil Local Rule 79-5(a) may be
 9 that Benworth’s Petition also violates the FAA. As the Ninth Circuit has explained, under the FAA,
 10 “judicial review of an arbitrator’s decision is both limited and highly deferential.” *Barnes v. Logan*,
 11 122 F.3d 820, 821 (9th Cir. 1997) (internal quotations omitted). “Neither erroneous legal
 12 conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award.”
 13 *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009) (quoting *Kyocera Corp. v. Prudential–*
 14 *Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003)). Rather, judicial review is limited. *Id.*
 15 (“Our review is limited by the [FAA], which enumerates limited grounds on which a federal court
 16 may vacate, modify, or correct an arbitral award.”) (internal quotations omitted). This limited
 17 review is “designed to preserve due process but not to permit unnecessary public intrusion into
 18 private arbitration procedures.” *U.S. Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167, 1173
 19 (9th Cir. 2010) (quoting *Kyocera Corp.*, 341 F.3d at 998.) In its Petition, Benworth disregards this
 20 precedent and instead seeks a “full-bore legal and evidentiary appeal[.]” *Oxford Health Plans LLC*
 21 *v. Sutter*, 569 U.S. 564, 568–69 (2013). Had Benworth’s Petition only addressed the grounds for
 22 vacatur that are permitted under the FAA, it likely would not have needed such a lengthy Appendix.

23 In any event, this Court should not allow Benworth to violate the Civil Local Rules and shift
 24 to Womply the burden of reviewing the more than 1,900 pages of documents in its Appendix to
 25 identify potentially confidential information.

26
 27 ² Benworth also violated Civil Local Rule 7-2(c) by failing to file a proposed order and Civil Local
 28 Rule 7-2(d) by failing to submit a supporting affidavit or declaration.

CONCLUSION

In hopes to avoid burdening the Court with the matter, the parties are meeting and conferring in an effort to agree on a narrower sealing request. In the event those efforts fail, for the reasons discussed above, Womply reserves the right to request that the Court issue an order requiring that Benworth submit an amended appendix and new motion to seal in compliance with Civil Local Rule 79-5(a), or, in the alternative, grant Womply an extension of 30 days to respond with particularity to Benworth's Motion.

1 Respectfully submitted,

2 Dated: August 15, 2024

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3 By: /s/ Alexander L. Cheney

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