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Oto Analytics, 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

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

Hon. Araceli Martínez-Olguín

Pursuant Civil Local Rule 7-11(b), Respondent Oto Analytics, LLC (f/k/a Oto Analytics, Inc. d/b/a Womply) (“Womply”) respectfully submits this response to Petitioner Benworth Capital Partners LLC’s (“Benworth”) Administrative Motion for *Nunc Pro Tunc* Enlargement of Page Limits, filed on August 29, 2024 (the “Instant Administrative Motion” or “Inst. Adm. Mot.”; ECF No. 28), which seeks retroactive relief from this Court to exceed the page limit applicable to Benworth’s Petition to Vacate Final Arbitration Award (“Petition to Vacate”; ECF No. 1) by 42 pages. Womply does not oppose the relief sought by Benworth in its Administrative Motion,¹ but provides this response to (i) summarize for this Court the current procedural posture of this case (the above-captioned action, the “Vacatur Action”) and a related case between the parties, *Womply v. Benworth*, No. 3:24-cv-3975-AMO (N.D. Cal. July 1, 2024) (the “Confirmation Action”), (ii) summarize the various administrative motions Benworth filed this week, and (iii) explain why this Court should maintain the current schedule and—other than with respect to the relief requested in the Instant Administrative Motion—maintain the page limits applicable to the parties’ briefs.

On August 12, 2024, Womply accepted service of Benworth’s 67-page Petition to Vacate. (Vacatur Action, ECF No. 8 (Waiver of Service, dated Aug. 12, 2024).) The Petition to Vacate exceeds the applicable page limit under Civil Local Rule 7-2(b) by 42 pages. On August 26, 2024, Womply filed a 25-page Opposition to the Petition to Vacate in compliance with the Local Civil Rules. (Vacatur Action, ECF No. 25.) In addition, in the first-filed Confirmation Action, Womply filed a motion to confirm the same arbitration award on August 20, 2024 (“Confirmation Motion”).² (*See* Confirmation Action, ECF No. 41.) Therefore, under the status quo, Benworth would have had until September 3, 2024, to file (i) an opposition to Womply’s Confirmation

¹ Womply initially declined to agree to Benworth’s request for permission to retroactively exceed the page limits imposed by the Civil Local Rules. (Declaration of Alexander L. Cheney in Support of Response to the Instant Motion, dated August 30, 2024 (“Cheney Decl.”) ¶ 4.) However, in the interest of avoiding further delay, Womply no longer opposes Benworth’s request. (*Id.* ¶ 5.)

² Womply moved to consolidate the related actions on August 29, 2024. (Confirmation Action, ECF No. 50.)

1 Motion in the Confirmation Action, and (ii) a reply brief in support of its Petition to Vacate in
2 this proceeding, the Vacatur Action.³

3 However, in the past few days—and in order to rectify its original violation of Civil Local
4 Rule 7-2—Benworth has filed a flurry of Administrative Motions seeking a wholesale revision
5 to the schedule and page limits applicable to its filings. In an August 26, 2024, administrative
6 motion filed in the Confirmation Action, Benworth asked this Court to disregard its Petition to
7 Vacate and Womply’s Opposition, grant Benworth an extension on its deadline to respond to the
8 Confirmation Motion, and allow Benworth to file a **60-page** opposition and cross-motion to
9 vacate the arbitral award. (*See* Confirmation Action, ECF No. 46.) Womply opposed.
10 (Confirmation Action, ECF No. 49.) This Court denied Benworth’s August 26, 2024,
11 administrative motion, save for a three-day extension of time. (Confirmation Action, ECF
12 No. 51.) In anticipation that this Court might deny its request (as it did), Benworth filed a
13 separate and untimely administrative motion in this Vacatur Action on August 29, 2024, asking
14 this Court to extend its deadline to file a reply in support of its Petition to Vacate by 30 days—
15 to October 3, 2024. (Vacatur Action, ECF No. 28.) Now, in the Instant Administrative Motion,
16 Benworth asks this Court to retroactively enlarge the page limit applicable to its earlier-filed
17 Petition to Vacate to 67 pages. Benworth contends that this would “obviate[] the need for
18 submission of a shorter Petition to Vacate, a new response, and briefing on reply in the event this
19 Court declines the administrative motion pending in the Confirmation Proceeding.” (Inst. Adm.
20 Mot. at 3.)

21 When Benworth initially asked Womply its position on the Instant Administrative
22 Motion, Womply refused to consent for several reasons. As detailed in Womply’s Opposition to
23 the Petition to Vacate, the vast majority of Benworth’s Petition to Vacate is devoted to criticisms
24 of the arbitrator’s factual findings and legal conclusions that are beyond the scope of this Court’s
25 limited review under the Federal Arbitration Act. (*See generally* Vacatur Action, ECF No. 25;
26

27 ³ On August 30, 2024, this Court granted Benworth a three-day extension to respond to Womply’s
28 Confirmation Motion. (Confirmation Action, ECF No. 51.)

1 Cheney Decl. ¶ 4.) Therefore, Womply believed that 67 pages for Benworth’s Petition to Vacate
2 was unreasonable and inappropriate. Moreover, Womply rejected Benworth’s “ask for
3 forgiveness rather than permission” approach to the rules governing this dispute, especially in
4 light of Benworth’s repeated failures to comply with the applicable rules. (*See, e.g.*, Petition to
5 Vacate (filed in excess of applicable page limits); Administrative Motion to Consider Whether
6 Another Party’s Material Should Be Sealed, Vacatur Action, ECF No. 3 (filing everything under
7 seal, including public documents, and shifting the burden to Womply to review and identify over
8 2,000 pages of potentially confidential material); Administrative Motion for Enlargement of
9 Time to Reply to Respondent’s Opposition to Petition to Vacate Final Arbitration Award,
10 Vacatur Action, ECF No. 27 (filed less than one week before its deadline to file the reply, in
11 violation of this Court’s Civil Standing Order).)

12 All that being said, Womply believes it would cause unnecessary delay if Benworth were
13 to file a new, shorter Petition to Vacate, as it suggests. (Inst. Adm. Mot. at 2–3.) Indeed, Womply
14 did not move to strike the Petition to Vacate for that reason. (Cheney Decl. ¶ 5.) Benworth’s
15 principal strategy in the relevant arbitration, this Vacatur Action, and the related Confirmation
16 Action has been to cause delay in the hopes that it will never have to pay Womply its fees.
17 Womply therefore does not oppose the Instant Administrative Motion in the interest of resolving
18 this dispute quickly and proceeding with its award collection efforts. Womply maintains its
19 objection to the other pending administrative motion Benworth filed this week seeking to alter
20 the schedule applicable to Benworth’s reply in support of its Petition to Vacate for the reasons
21 stated in Womply’s opposition to that motion. (*See* Vacatur Action, ECF Nos. 27, 29.) Womply
22 respectfully requests that this Court deny that administrative motion as it did Benworth’s
23 August 26, 2024, Administrative Motion (Confirmation Action, ECF No. 51), and maintain the
24 status quo to ensure a prompt resolution of this matter.

1 Respectfully submitted,

2 Dated: August 30, 2024

WILLKIE FARR & GALLAGHER LLP

3 By: /s/ Alexander L. Cheney

4 Alexander L. Cheney

5 Stuart R. Lombardi (*pro hac vice*)

6 Joshua S. Levy (*pro hac vice*)

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8 *Oto Analytics, LLC*