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

OTO ANALYTICS, LLC f/k/a OTO
ANALYTICS, INC. d/b/a WOMPLY,

Petitioner,

v.

BENWORTH CAPITAL PARTNERS, LLC,

Respondent.

Case No. 3:24-cv-03975-AMO

**BENWORTH'S ADMINISTRATIVE
MOTION FOR CLARIFICATION OF
DEADLINE AND/OR FOR EXTENSION
OF TIME TO RESPOND TO WOMPLY'S
PETITION**

Hon. Araceli Martinez-Olguin

Pursuant to Local Rules 6-3 and 7-11, Respondent Benworth Capital Partners, LLC (“Benworth”), moves to clarify the deadline to respond to Oto Analytics, LLC’s (“Womply[’s]”) Petition to Confirm Arbitration Award (the “Petition”) or, alternatively, moves for an extension of time to and including September 3, 2024, in accordance with the Federal Arbitration Act (“FAA”).¹ Womply requested that Benworth accept service of process and, in exchange, would have the customary 60 days to respond to the Petition. Declaration of Dwayne A. Robinson (“Robinson” Decl.), ¶¶ 4-5. Then, Womply told Benworth that Benworth had 14 days to respond to Petition—the day before the alleged due date. *Id.*, ¶ 6. Benworth requests clarification of the deadline or an extension of time to preserve its due process rights under the FAA.

This is a dispute related to the Paycheck Protection Program (“PPP”). Benworth is a licensed PPP lender with the Small Business Administration that operates the federal program. Benworth arbitrated a dispute with Womply, who assisted Benworth to prepare and refer PPP loan applications during the COVID-19 pandemic, mainly from minority-owned businesses. *Id.*, ¶¶ 1-2.

On December 21, 2023, the arbitrator issued an interim award in the JAMS arbitration styled *Oto Analytics, Inc. v. Benworth Capital Partners LLC*, JAMS Ref. No. 1210038203. *Id.*, ¶¶ 2-3. On May 30, 2024, the Arbitrator issued his initial final award. *Id.* On June 26, 2024, the Arbitrator amended the final award (the “Amended Final Award”) to correct the award. *Id.*

On July 1, 2024, Womply filed the Petition with this Court. ECF No. 1. That day, Womply’s counsel wrote counsel for Benworth, requesting that Benworth accept service and execute a waiver of

¹ In line with the Court’s Order (ECF No. 25), Benworth intends to file a response to the Petition by July 23, 2024 with the understanding that this motion will not be resolved before that deadline. Benworth nevertheless contends that it has not been afforded sufficient time to respond to the Petition and therefore files this motion to request that the deadline be extended, and it be given an opportunity to file an amended or superseding response. This is Benworth’s first substantive motion for an extension; the agreed stipulation was submitted in an abundance of caution by Benworth so it could brief this matter for the Court prior to the expiration of any purported deadlines. Under these circumstances, Benworth should be given an opportunity to address the merits of its request. *See Shelley v. Patrick*, 427 Fed. Appx. 66, 69 (3d Cir. 2011) (reversing dismissal because the court denied plaintiff’s first motion for extension of time to respond to a motion to dismiss even though it was filed before the deadline to respond).

the service of summons (the “Waiver”). Robinson Decl., ¶ 4. Counsel for Womply drafted the Waiver, as follows:

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 7/1/2024, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.	
Date: _____	_____ <i>Signature of the attorney or unrepresented party</i>
Benworth Capital Partners LLC <i>Printed name of party waiving service of summons</i>	Dwayne A. Robinson <i>Printed name</i>

Waiver of Service of Summons, Attached to Email from Womply’s Counsel to Benworth’s Counsel (July 1, 2024) (highlight added). *Id.*, ¶ 5, Ex. 1. The waiver noted that if Benworth waived service of process it would receive 60 days to respond to the Petition. *Id.* In light of that stipulation, Benworth accepted service of process as of July 5, 2024. *Id.* The executed Waiver allowed a response “within 60 days from 7/5/2024,” or September 3, 2024. *See* ECF No. 15.

Almost two weeks later, however, counsel for Womply wrote counsel for Benworth and, for the first time, asserted that a response to the initial pleading was due on the next day: July 19, 2024. Robinson Decl., ¶ 6. Womply argued that its Petition was a motion, so the response was due in two weeks, not 60 days. *Id.*, ¶ 7. The parties conferred in an attempt to resolve this timing dispute, but Womply would only agree to a stipulated deadline no earlier than July 23, 2024. *See* ECF No. 24; Robinson Decl., ¶ 8-9.

This Court should clarify the deadline to respond to the Petition or, in its discretion, set the deadline for the response no earlier than September 3, 2024. Womply submitted the Waiver that proposed granting Benworth 60 days to respond. Benworth accepted service in reliance on Womply’s proposed Waiver. Womply benefitted from the Waiver by avoiding the need to formally serve Benworth. Now, that Benworth agreed to the Waiver, Womply argues that the Waiver’s 60-day provision is inapplicable. This Court should uphold the parties’ agreement that permitted Benworth 60 days to respond to the Petition in exchange for agreeing to accept service of process. This Court may also extend the deadline on its own. It should do so to preserve the due process rights of Benworth.

A defense to confirmation is a petition to vacate, modify, or correct an award under the FAA's § 10 and § 11. *See Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) ("The Act states that if a party seeks a judicial order confirming an arbitration award, 'the court must grant such an order unless the award is vacated, modified or corrected *as prescribed in sections 10 and 11 of this title.*'" (quoting 9 U.S.C. § 9)). The deadline to file a petition to vacate is three months after the award is filed or delivered. 9 U.S.C. § 12. The Ninth Circuit does not permit parties to raise defenses to confirmation that are not asserted in a petition to vacate. *Bd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty. v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983). Accordingly, Benworth will suffer substantial prejudice if it is forced to prematurely respond to Womply's Petition.

Benworth's statutory right to seek vacatur will not expire until September 26, 2024, three months after delivery of the Amended Final Award. *See* 9 U.S.C. § 12. Womply wants Benworth to respond to the Petition to Confirm no later than July 23, 2024, effectively denying Benworth's statutory rights under the FAA. Given that the primary issue in the confirmation proceedings is whether the award has been vacated, modified, corrected, confirmation proceedings should await resolution of the vacatur proceedings. Benworth anticipates submitting its vacatur petition well in advance of its September 26th deadline. But, in any event, Benworth should not be required to file a response by July 23, 2024, especially when the parties entered a stipulated waiver of service that grants Benworth 60 days to respond.

In conclusion, this Court should clarify the deadline for Benworth to respond to the Petition or set the deadline as no earlier than September 3, 2024.

Dated: July 22, 2024

Respectfully submitted,

/s/ Simon S. Grille

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