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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-3975-AMO

**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**

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

Pursuant to Local Rules 7-2, 7-3, and 7-11, Respondent, Benworth Capital Partners, LLC (“Benworth”), seeks an enlargement of the page limits applicable to its Cross-Motion to Vacate and Response to Petitioner, Oto Analytics, LLC (“Womply”)’s Motion to Confirm Final Arbitration Award (“Womply’s Motion”) (ECF No. 41). Due to the complex nature of this dispute, the extensive record, and the standard for vacating an arbitration award, the 25-page limit prescribed by Local Rule 7-2 and 7-3 is insufficient for Benworth to adequately present its case for vacatur to the Court.

Pursuant to Local Rule 6-3 and 7-11, Benworth requests an extension of the time to respond to Womply’s Motion until ten (10) days after the Court rules on the instant request for enlargement of the applicable page limits. This extension will benefit the parties and the Court because it will enable the Court to consider Benworth’s arguments for vacatur and Womply’s arguments for confirmation under the same briefing schedule.

At bottom, Benworth proposes that instead of the Court adjudicating two separate petitions under the Federal Arbitration Act (“FAA”)—Womply’s Petition to Confirm and Benworth’s Petition to Vacate¹—that Benworth submit its Petition to Vacate as a Response/Cross-Petition to Womply’s Petition so that the Court may address the matters in one uniform and efficient manner.

I. Relevant Background

This is a dispute related to the Paycheck Protection Program (“PPP”). The PPP was administered by the U.S. Small Business Association (“SBA”) in response to the devastating economic consequences of the COVID-19 Pandemic. Robinson Decl. ¶ 1. Benworth is a licensed PPP lender with the SBA that focuses on providing necessary funds to minority-owned small businesses. *Id.* Womply sought to capitalize on the PPP by referring and preparing PPP loan applications to lenders like Benworth. *Id.*

Benworth and Womply entered a series of agreements whereby Womply collected, analyzed, and verified all the information and documents that borrowers were required to submit to apply for a PPP loan. *See* Agent Agreement, *Vacatur Action*, ECF No. 3-44. When the SBA extended the second round of PPP funding, Womply requested that Benworth enter a series of new agreements including a “referral agreement” and an “order form” (the “Operative Agreements”). *See* Operative Agreements, ECF No. 41-

¹ Benworth filed its Petition to Vacate in the related case styled *Benworth v. Womply*, Case No. 3:24-cv-4840 (N.D. Cal) (the “Vacatur Action”).

3&4. These agreements all expressly incorporate extensive SBA rules, regulations, and standard operating procedures (“SOPs”). *Id.* Eventually, the relationship between Benworth and Womply soured resulting in arbitration. Robinson Decl. ¶ 2.

Because of the highly technical nature of the parties’ agreements and the ensuing dispute, the final arbitration hearing spanned over eight days and the record contains more than 4,000 pages of documentary, photographic, and video evidence—including numerous briefs by the parties and hundreds of pages of SBA SOPs, rules, and regulations. Robinson Decl. ¶ 3. Indeed, the 73-page final award highlights the challenge of summarizing and adjudicating this dispute. *See* Corrected Final Award, ECF No. 41-5.

The FAA prevents a Court from confirming an award that has been vacated, modified, or corrected. *See* 9 U.S.C. § 9. The FAA provides a series of reasons for which a court may grant vacatur. *See* 9 U.S.C. § 10. Two of those reasons are applicable here. The FAA allows vacatur where the arbitrator is “guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown.” 9 U.S.C. § 10 (a)(3). Vacatur is also appropriate where an arbitrator exceeds his powers. 9 U.S.C. § 10 (a)(4). An arbitrator exceeds his powers “when the award is ‘completely irrational’ or exhibits a ‘manifest disregard of the law.’” *Aspic Eng’g & Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1166 (9th Cir. 2019) (*Aspic*). Finally, Benworth is also seeking vacatur because the award violates public policy. *See United Transp. Union v. Union Pac. R. Co.*, 116 F.3d 430, 433 (9th Cir. 1997).

II. Motion for Enlargement of Page Limits

Benworth, aware of the burden it must carry in seeking vacatur, requires more than 25 pages to adequately meet that standard. To show that the arbitrator is guilty of misconduct in refusing to postpone the hearing, Benworth first must demonstrate that there was sufficient good cause at the time the request was made. *See* 9 U.S.C. § 10 (a)(3) (requiring good cause to postpone a hearing before refusal to do so constitutes grounds for vacatur). This requires a discussion of the SBA investigation into Womply for allegedly charging excessive fees and making misrepresentations about the services it offered to lenders like Benworth. *See* Email from SBA Attorney to Benworth’s Counsel, *Vacatur Action*, ECF No. 3-2883-84 (summarizing the scope of the SBA investigation into Womply). Then, Benworth must detail the how the results of the SBA investigation would affect the outcome of the arbitration to demonstrate that the

1 arbitrator's refusal to postpone the hearing until SBA's investigation was complete, constitutes an act of
2 misconduct.

3 To show that the award is "completely irrational[.]" Benworth must prove that "the arbitration
4 decision fails to draw its essence from the agreement." *Aspic*, 913 F.3d at 1166 (internal quotations
5 omitted). This requires Benworth to describe the detailed requirements of the Operative Agreements.
6 Because all agreements between the Parties expressly incorporate and grant supremacy to SBA rules,
7 regulations and SOPs, the Petition must detail those materials and show how each apply to the
8 relationship between Benworth and Womply. Then, Benworth must contrast those requirements with the
9 arbitrator's findings to demonstrate that the arbitration award is untethered to the Operative
10 Agreements—including the incorporated SBA rules, regulations and SOPs—such that it is completely
11 irrational and manifestly disregards the law.

12 Finally, to demonstrate that the award violates public policy, Benworth must first describe "an
13 explicit, well-defined policy." *United Transp. Union*, 116 F.3d at 433. This also requires a detailed
14 discussion of the SBA regulations that govern agreements between lenders, their agents, and lender
15 service providers. That is half of the public policy inquiry. Next, Benworth needs to show that "the policy
16 [(i.e. the applicable SBA regulations)] is one that specifically militates against the relief ordered by the
17 arbitrator." *Id.* To do so, the Petition explains how the arbitration award, if confirmed, will require
18 Benworth to violate the SBA requirements that govern the services Womply provided under the Operative
19 Agreements.

20 This Court should accordingly enlarge the page limit in Local Rule 7-2 and 7-3 to 60 pages to
21 allow Benworth an adequate opportunity to present these issues to the Court in light of the extensive
22 record, the technical nature of the subject matter, and the exacting standard for vacating an arbitration
23 award.

24 **III. Motion for Extension of Time**

25 Womply's Motion was filed on August 20, 2024, and is currently set for hearing on January 9,
26 2025. Local Rule 7-3 requires that Benworth respond by September 3, 2024. Under the FAA,
27 confirmation and vacatur are two sides of the same coin such that if an award is vacated, it cannot be
28 confirmed. *See* 9 U.S.C. § 9 (a court must confirm an arbitration award "unless the award is vacated,

modified, or corrected as prescribed in sections 10 and 11 of this title”). On August 7, 2024, Benworth filed a separate action seeking to vacate the arbitration award underlying Womply’s Motion. *See Benworth v. Womply*, 3:24-cv-4840 (N.D. Cal) (the “Vacatur Action”). This case and the Vacatur Action were related on August 15, 2024. (ECF No. 39). To streamline the briefing, the parties have agreed to consolidate this case with the Vacatur action. Robinson Decl. ¶ 11.

Benworth intends to file a cross-motion to vacate the arbitration award and response to Womply’s Motion, instead of responding to Womply’s Motion here, and separately seeking to vacate the award in the Vacatur Action. Robinson Decl. ¶ 6. This proposal will save time for the parties and the Court because the arguments for vacatur and confirmation will be laid out in one set of briefs rather than two. *Id.*

However, because Benworth requires more than 25 pages to present its case for vacatur, guidance from the Court on the page limit issue is necessary before Benworth can convert the Petition to Vacate filed in the Vacatur Action into a cross-motion and response to Womply’s Motion. Robinson Decl. ¶ 7. Accordingly, Benworth respectfully requests that the Court extend the deadline to respond to Womply’s Motion until ten (10) days after the Court rules on the Motion for Enlargement of Page limits, *see supra* Part II. Benworth would be prejudiced if it is required to file a response to Womply’s Motion without the benefit of the Court’s decision on Benworth’s request for additional pages.

* * *

Pursuant to Local Rules 6-3 and 7-11(a), Benworth submits a declaration along with this motion which explains that a stipulation under Local Rule 7-12 could not be reached because counsel for Womply disagreed with the requested relief and believes Benworth’s request to consolidate the briefing is moot. The undersigned disagrees.

Mindful of the September 3rd deadline to respond to Womply’s Motion, Benworth submits this motion promptly after learning that Womply would not stipulate to the requested relief.

Dated: August 26, 2024

Respectfully submitted,

/s/ Dwayne A. Robinson
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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 26, 2024

/s/ Simon S. Grille

Simon S. Grille