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Oto Analytics, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OTO ANALYTICS, LLC,

Petitioner,

v.

BENWORTH CAPITAL PARTNERS LLC,

Respondent.

Case No. 3:24-cv-3975-AMO

**PETITIONER'S OPPOSITION TO
RESPONDENT'S ADMINISTRATIVE
MOTION FOR ENLARGMENT OF
PAGE LIMITS APPLICABLE TO
RESPONDENT'S CROSS-MOTION TO
VACATE, AND FOR EXTENSION OF
TIME TO RESPOND TO PETITIONER'S
MOTION TO CONFIRM**

Hon. Araceli Martínez-Olguín

Pursuant to this Court’s August 27, 2024 Order (ECF No. 48), Petitioner Oto Analytics, LLC (f/k/a Oto Analytics, Inc. d/b/a Womply) (“Womply”) submits this opposition to Respondent Benworth Capital Partners LLC’s (“Benworth”) Administrative Motion (the “Administrative Motion” or “Adm. Mot.”; ECF No. 46), filed on August 26, 2024. Womply respectfully requests that this Court deny Benworth’s request to increase page limits to 60 pages—more than twice the permitted length under the Civil Local Rules—because (among other reasons) Benworth has already demonstrated that it will use those pages to brief arguments prohibited by the Federal Arbitration Act (“FAA”). Benworth’s only basis to request an extension of time is its own unreasonable request for an additional 35 pages to brief statutorily improper arguments, and therefore also should be denied. To the extent this Court gives Benworth extra time, Womply respectfully requests that the extension be limited to three additional days, to September 6, 2024.

BACKGROUND

On July 1, 2024, Womply filed a 14-page petition to confirm the final award in the underlying arbitration (the “Final Award”). (ECF No. 1.) On August 15, 2024, this Court held that Womply’s petition did not trigger Benworth’s deadline to respond, and therefore Womply would need to re-file its petition with a notice motion (ECF No. 40), which Womply did on August 20, 2024 (the “Confirmation Motion”; ECF No. 41). Benworth’s response to the Confirmation Motion is due on September 3, 2024 under Civil Local Rule 7-3.

On August 12, 2024, Womply accepted service of Benworth’s 67-page petition to vacate the Final Award (the “Petition to Vacate”), which Benworth filed in a separate action.¹ On the same day, Womply notified Benworth that its Petition to Vacate exceeded the 25-page limit under Civil Local Rule 7-2 by 42 pages. (Declaration of Alexander L. Cheney ¶ 3.) On Sunday, August 25, 2024—one day before Womply’s response to the Petition to Vacate was due—Benworth asked to meet and confer about the due date, proposed that Womply not file any response to the Petition to Vacate, and asked Womply to consent to Benworth filing a 60-page combined

¹ *Benworth Capital Partners LLC v. Oto Analytics, LLC*, No 3:24-cv-4840 (N.D. Cal. Aug. 7, 2024) (“Vacatur Action”), ECF No. 1.

1 opposition to the Confirmation Motion and a new cross-motion to vacate the Final Award. (*Id.*
 2 ¶ 4.) On August 26, 2024, Womply declined Benworth’s proposal for several reasons, including
 3 because Womply had nearly completed its opposition to the Petition to Vacate, Womply was
 4 concerned that it would waive its rights if it failed to respond to the Petition to Vacate by the
 5 August 26 deadline, and Womply disagreed that Benworth needed 60 pages to oppose Womply’s
 6 Confirmation Motion given the limited scope of judicial review permitted under the FAA. (*Id.*
 7 ¶ 6.) Nevertheless, Womply offered to meet and confer on the subject the following day—
 8 August 27—but Benworth never responded to that offer. (*Id.* ¶ 7.) Also on August 26, 2024,
 9 Womply timely responded to Benworth’s 67-page Petition to Vacate with a 25-page opposition
 10 (“Opposition”) in compliance with the Civil Local Rules. (Vacatur Action, ECF No. 25.)

11 Now, after seeing Womply’s Opposition, Benworth wants a do-over. In a tacit
 12 acknowledgement that its 67-page Petition to Vacate violates the Civil Local Rules, Benworth
 13 asks the Court to disregard its Petition to Vacate (and therefore Womply’s Opposition) and grant
 14 Benworth permission to file a new **60-page** brief in opposition to Womply’s Confirmation
 15 Motion and in support of a new motion to vacate the Final Award. (*See* Adm. Mot. at 3–4.)
 16 Benworth suggests that this new brief will raise the same issues raised in its original Petition to
 17 Vacate. (*Id.*) Benworth also seeks an extension of time to file this new brief to 10 days after the
 18 Court’s decision on its Administrative Motion. (*Id.* at 4.)

19 **ARGUMENT**

20 **I. Benworth’s Motion To More Than Double Page Limits Should Be Denied.**

21 It is clear from Benworth’s original Petition to Vacate that Benworth seeks permission to
 22 file 60 pages to oppose the Confirmation Motion and to cross-move to vacate so that it can pursue
 23 a full-blown appeal of the arbitrator’s findings of fact and legal determinations, which is
 24 prohibited by the FAA. Judicial review of the Final Award is exceedingly narrow, and this Court
 25 is not permitted to review findings of fact or overturn errors of law. *See Barnes v. Logan*, 122
 26 F.3d 820, 821 (9th Cir. 1997) (“[J]udicial review of an arbitrator’s decision is both limited and
 27 highly deferential.”) (cleaned up); *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232,

1241 (9th Cir. 2022) (explaining that a court must accept an arbitrator’s findings of fact); *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009) (“Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award.”) (cleaned up). The limited judicial review permitted by the FAA is “designed to preserve due process but not to permit unnecessary public intrusion into private arbitration procedures.” *U.S. Life Ins. Co. v. Super. Nat’l Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010) (cleaned up).

Contrary to Benworth’s assertions (*see* Adm. Mot. at 2–3), the specific grounds on which Benworth purportedly seeks to vacate the Final Award do not require an extensive analysis of the factual record. To prove that the arbitrator is “guilty of misconduct,” Benworth must show there was “sufficient good cause at the time the request was made” to postpone the Arbitration hearing. (*Id.* at 2.) To show that the Final Award is “completely irrational,” Benworth must prove that “the arbitration decision fails to draw its essence from the agreement.” (*Id.* at 3.) And to demonstrate that the Final Award violates public policy, Benworth must identify “an explicit, well-defined policy.” (*Id.*) It is precisely because these statutory grounds for vacatur do not require an extensive analysis of the factual record that proceedings to confirm or vacate an award are “summary” in nature. *Int’l Petroleum Prods. & Additive Co. v. Black Gold, S.A.R.L.*, 418 F. Supp. 3d 481, 487 (N.D. Cal. 2019). Indeed, Benworth’s claim that it requires 60 pages to recount the “extensive record” and describe the “technical nature of the subject matter” (Adm. Mot. at 3) is further evidence that Benworth cannot satisfy these narrow grounds for vacatur under the Court’s limited review. Moreover, Womply opposed Benworth’s 67-page Petition to Vacate in 25 pages by limiting its arguments to the scope of review permitted by the FAA; there is no reason Benworth cannot do the same in opposing Womply’s Confirmation Motion.

Allowing Benworth to file a 60-page opposition and cross-motion will not “save time for the parties and the Court.” (*Id.* at 4.) To the contrary, it will benefit only Benworth and increase work for Womply and this Court. Benworth plainly wants an expansion of page limits (i) to absolve its violation of the page limits in its Petition to Vacate, (ii) so that it has to do little more than shave seven pages off of its 67-page Petition to Vacate and use it as its new opposition and

cross-motion, and (iii) so that it can revise its Petition to Vacate to address specific arguments made in Womply's August 26 Opposition. But if this Court allows Benworth to file a 60-page opposition and cross-motion, Womply must reserve its right to seek a similar page-limit increase for its opposition to that cross-motion. Womply's Opposition currently is just 25 pages, but to the extent the Court grants Benworth's request, Womply may need to expand it in order to fully address Benworth's various criticisms of the arbitrator's factual findings and legal conclusions (and any new arguments Benworth makes after seeing Womply's August 26 Opposition). This may result in over 120 pages of briefing, not including reply briefs. And—like Benworth's Petition to Vacate—most of this briefing will be focused on legal conclusions and factual findings in the Final Award that the Court is not permitted to review under the FAA. In other words, Benworth seeks the type of expansive post-arbitration proceeding that the Supreme Court has expressly warned against: “[i]f parties could take full-bore legal and evidentiary appeals, arbitration would become merely a prelude to a more cumbersome and time-consuming judicial review process.” *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568–69 (2013) (cleaned up).

To the extent Benworth claims that its proposal will address the procedural complexity created by Benworth's own decision to file its Petition to Vacate in a separate proceeding, that issue can be resolved by consolidating the cases, which Benworth acknowledges the parties have agreed to do. (Adm. Mot. at 4.) Accordingly, Womply is filing concurrently with this opposition a motion to consolidate under Federal Rule of Civil Procedure 42(a).

II. Benworth's Motion For Extension Of Time Should Be Denied.

Benworth's only basis for seeking more time is that its response to Womply's Confirmation Motion is due on September 3, and it does not know whether it remains subject to the 25-page limit in the Civil Local Rules or if this Court will grant its unreasonable and belated request for an additional 35 pages. Thus, Benworth has created the very uncertainty and time crunch that it now relies on to argue for an extension.

There is no justification for Benworth putting itself in this position. Benworth chose to file its Petition to Vacate in a separate action, and Benworth has known for weeks that its Petition

1 to Vacate violates the applicable page limits. Inexplicably, Benworth waited until August 26,
2 2024—the last day that it could seek an extension of time under the Civil Local Rules—to ask
3 this Court for an unreasonable expansion of the page limits and at least a 10-day extension. We
4 assume that Benworth has been preparing an opposition to the Confirmation Motion that
5 complies with the 25-page limit in the event this Court denies its requested relief but, to the extent
6 it has not, that does not justify an extension. Benworth should not be rewarded for its own failure
7 to seek relief from this Court promptly, its disregard of the Civil Local Rules, and its refusal to
8 restrict its arguments in favor of vacatur to those that are permitted by the FAA.

9 Womply does not make the decision to oppose Benworth’s request for an extension of
10 time lightly. But it comes after more than three years of litigation that has suffered from repeated
11 delays and efforts by Respondent to avoid paying Womply the amounts it is due. As this Court
12 is aware, during the underlying arbitration, Benworth misrepresented to the arbitrator and
13 Womply that it was holding the disputed funds “in trust” pending the outcome of the arbitration.
14 (Confirmation Motion at 8.) In fact, Benworth fraudulently transferred those funds to an
15 affiliated company in Puerto Rico controlled by the spouse of Benworth’s principal, and Womply
16 and the Federal Reserve Bank of San Francisco are suing Benworth and others in federal court
17 in Puerto Rico to undo that transaction. (*Id.*) Benworth’s strategy in both proceedings is to cause
18 delay, which only serves to prejudice Womply by increasing the risk that Womply will be unable
19 to recover its award. The fact that a hearing on Womply’s Motion to Confirm is not scheduled
20 until January 2025 is irrelevant.² Given the limited and highly deferential judicial review of
21 arbitral awards permissible under the FAA, Womply respectfully submits that a hearing is
22 unnecessary and this Court can and should resolve Womply’s Motion to Confirm and Benworth’s
23 Petition to Vacate on the papers.

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27 ² Womply sought Benworth’s consent to refer this case to a magistrate judge who may be able to
28 resolve it more quickly, but Benworth has not responded.

Respectfully submitted,

Dated: August 29, 2024

WILLKIE FARR & GALLAGHER LLP

By: /s/ Alexander L. Cheney

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