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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OTO ANALYTICS, LLC, Petitioner, v. BENWORTH CAPITAL PARTNERS LLC, Respondent.	Case No. 3:24-cv-03975 **PETITION TO CONFIRM ARBITRATION AWARD AND FOR ENTRY OF JUDGMENT**

Petitioner Oto Analytics, LLC (f/k/a Oto Analytics, Inc., d/b/a Womply) ("Womply") hereby petitions this Court pursuant to 9 U.S.C. § 9 for an order confirming the June 26, 2024 arbitral award ("Final Award") issued in the JAMS arbitration captioned *Oto Analytics, Inc. d/b/a Womply v. Benworth Capital Partners LLC*, JAMS Ref. No. 1210038203 (the "Arbitration"), and requests that this Court enter judgment. The Petition is based on the following facts:

PARTIES

1. Petitioner Womply is a limited liability company organized under the laws of Delaware with no physical presence. To the extent Womply has a principal place of business, it is in Nevada, where its CEO resides. Womply's sole member is Oto Holdco, LLC, which is a limited liability company organized under the laws of Delaware. Oto Holdco, LLC's sole member is SCAT20210724, LLC, which is a limited liability company organized under the laws of Arizona. SCAT20210724, LLC's sole member is AltoIRA Custodian FBO Toby Scammell Roth IRA. AltoIRA Custodian FBO Toby Scammell Roth IRA's sole beneficiary is Toby Scammell, who is a citizen of Nevada. Womply is the successor in interest to Oto Analytics, Inc. d/b/a Womply.

2. Respondent Benworth Capital Partners LLC ("Benworth") is a limited liability company organized under the laws of Florida with its principal place of business in Coral Gables, Florida. On information and belief, Benworth's sole member and equity holder is Bernardo Navarro ("Mr. Navarro"), who is a citizen of Puerto Rico.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Petitioner and Respondent, and the amount in controversy, exclusive of interest and costs, exceeds $75,000.

4. This Court has personal jurisdiction over Womply and Benworth because both parties agreed to arbitrate in San Francisco, California, and the arbitration agreement among the parties provides that "the decision of the arbitrator will be enforceable in any court." (Ex. 1 ("Referral Agreement") § 10.)[1] Because the Arbitration was held, and the Final Award was made, in San Francisco, California, which is within this District, the Court has personal jurisdiction over Womply and Benworth. 9 U.S.C. § 9 ("If no court is specified in the agreement of the parties, then such application may be made in the United States court in and for the district

[1] All references to "Exhibit" or "Ex." refer to exhibits to the accompanying declaration of Alexander L. Cheney ("Cheney Decl.").

within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding.").

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 9 U.S.C. § 9, because the Arbitration was held, and the Final Award was made, in San Francisco, California.

DIVISIONAL ASSIGNMENT

6. Pursuant to Civil Local Rule 3-2(c), assignment to the San Francisco division is appropriate because the Arbitration was held, and the Final Award was made, in San Francisco, California.

BACKGROUND

A. Benworth Contracts For Womply's Services But Fails To Pay Womply's Fees.

7. In response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), which, among other things, created the Paycheck Protection Program ("PPP"). The PPP was administered by the United States Small Business Administration ("SBA") and allowed qualifying small businesses to apply for low-interest private loans to fund expenses such as payroll costs, rent, interest, and utilities. PPP loans could be partially or fully forgiven if a borrower spent the loan money in accordance with the program requirements. In order to incentivize lenders to make PPP loans, PPP lenders received interest on the loans as well as lucrative "Lender Processing Fees" from the SBA, calculated as a percentage of a PPP loan's principal amount. The President of the United States signed the CARES Act into law on March 27, 2020. (Ex. 3 ("Final Award") at 8–9.)

8. When the COVID-19 pandemic arrived in the United States, Womply was a technology company that was providing technology services to small businesses. It saw firsthand how small businesses struggled to obtain PPP loans, including because lenders focused on making relatively large loans to large businesses due to the higher Lender Processing Fees associated with those loans. (*Id.* at 16.)

9. In early 2021, Womply developed a technology platform called "PPP Fast Lane" to address the barriers to small businesses receiving PPP funds. PPP Fast Lane allowed PPP lenders that contracted to use the PPP Fast Lane service to efficiently process, review, and manage a large volume of PPP loan applications. (*Id.* at 2–3, 16, 24–29.)

10. Benworth is a mortgage lender that originates and services loans that traditional banks do not underwrite. (*Id.* at 16.) In 2021, Benworth processed, reviewed, and managed PPP loan applications using PPP Fast Lane pursuant to an Amended and Restated PPP Loan Referral Agreement ("Referral Agreement") and Womply Developer Order Form (Ex. 2 ("Order Form"); together with the Referral Agreement, the "Agreements"). Pursuant to the Agreements, Benworth was required to pay Womply certain Referral Fees, API Fees, and Technology Fees for each PPP loan that Benworth processed and funded using PPP Fast Lane. (Referral Agreement § 2.2; Order Form §§ 2.1–2.2.)

11. With the efficiencies created by Womply's PPP Fast Lane technology, Benworth processed and funded more than 300,000 PPP loans with a total principal amount of more than $4 billion, for which Benworth received more than $680 million in Lender Processing Fees from the SBA. (Final Award at 22, 29–30.) Benworth failed to pay Womply all of the fees that Womply earned under the Agreements. (*Id.* at 4–5, 29–30, 51–54.)

12. Pursuant to the Agreements, the fees Benworth failed to pay to Womply accrued interest, which the Agreements refer to as "finance charges." (Referral Agreement § 2.4.)

B. Womply Commences Arbitration Against Benworth To Recover Its Unpaid Fees.

13. On August 25, 2021, Womply commenced the Arbitration against Benworth by filing a Demand for Arbitration and Statement of Claim with JAMS. Womply commenced the Arbitration pursuant to the arbitration provision in the Referral Agreement, which was incorporated by reference in the Order Form. Section 10 of the Referral Agreement reads:

> Without limiting a party's right to seek injunctive or other equitable relief in court, any dispute between the parties related to the subject matter of this Agreement will be resolved by binding arbitration in the English language in San Francisco County, California under the rules of JAMS; the decision of the arbitrator will be enforceable in

> any court. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees.

(Referral Agreement § 10.)

14. Womply asserted three breach of contract claims against Benworth for failure to pay more than $155 million in Referral Fees, API Fees, and Technology Fees due under the Agreements. (Final Award at 4–5, 29–30.) Womply sought payment of the unpaid fees, as well as its "costs of collection" and the "finance charges" that accrued on the unpaid fees. (*Id.*)

15. On October 1, 2021, Benworth filed its Answer, Affirmative Defenses, and Counterclaims. Benworth asserted: (1) affirmative defenses of illegality and setoff based on Benworth's contention that Womply's API Fees and Technology Fees exceeded the limits established by the SBA, and (2) an affirmative defense of condition precedent based on Benworth's contention that Womply was barred from recovering any Referral Fees to the extent that Benworth had not received the corresponding Lender Processing Fees from the SBA.[2] (Final Award at 5.) Benworth also asserted counterclaims against Womply for: (1) declaratory relief, (2) breach of contract, (3) severance and enforcement, and (4) money had and received. All of Benworth's counterclaims are based on Benworth's contention that Womply's fees violate SBA regulations. (*Id.* at 6, 30–31.) Benworth also disagreed with Womply's method for calculating its Technology Fees. (*Id.* at 5–6, 30–31.)

16. On October 19, 2021, Alexander "Lex" Brainerd was appointed as the arbitrator in the Arbitration (the "Arbitrator"). (Ex. 4.)

C. The Arbitrator Issues An Interim Award After More Than Two Years of Arbitration And A Seven Day Trial.

17. The nearly three-year Arbitration was hard-fought. The parties:

a. participated in dozens of conferences with the Arbitrator;

b. conducted seven depositions;

c. exchanged over 47,000 documents in discovery;

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[2] Benworth also asserted an affirmative defense of promissory fraud that it later withdrew. (Final Award at 5.)

d. received eight substantive orders from the Arbitrator regarding discovery disputes and other issues; and

e. submitted extensive pre-hearing and post-hearing briefing.

(*See* Cheney Decl. ¶¶ 17, 19.)

18. From March 20 to March 28, 2023, the parties participated in a seven-day evidentiary hearing "akin to a full-fledged trial" in San Francisco, California. (Final Award at 68–69.)

19. On May 12, 2023, after the evidentiary hearing concluded, the parties submitted post-hearing briefing. (*Id.* at 8.) On June 29, 2023, the parties gave closing arguments via Zoom videoconference. (*Id.*)

20. On December 21, 2023, the Arbitrator issued an Interim Award finding in Womply's favor on its three breach of contract claims. (*Id.* at 2, 50–52.) The Arbitrator also found in Womply's favor on Benworth's counterclaims, holding that neither the Agreements nor Womply's fees were illegal. (*Id.* at 41, 47, 52–53.) However, the Arbitrator agreed with Benworth's method for calculating Womply's Technology Fees. (*Id.* at 47–50, 52.) The Arbitrator also found that Benworth had abandoned its failure of condition precedent affirmative defense advanced in its Answer by failing to litigate it or otherwise present evidence on the issue. (*Id.* at 5–6.)

21. The Interim Award held that Womply was entitled to:

a. $4,348,275 in unpaid Referral Fees;

b. $17,067,000 in unpaid API Fees;

c. $64,884,617 in unpaid Technology Fees (***less than half*** of what Womply sought);

d. finance charges on each of these unpaid fees; and

e. the cost of collecting these unpaid fees and interest, to be determined at a later date.

(*Id.* at 53–54.)

22. On December 28, 2023, Benworth moved for reconsideration of the Interim Award, arguing (among other things) that the Arbitrator should reconsider his interpretation and application of the relevant regulations and that new information had come to light from the SBA warranting reopening the proceedings on Benworth's affirmative defense. Womply opposed.[3] (*Id.* at 55.)

23. On February 21, 2024 the Arbitrator memorialized his rulings regarding Benworth's motion for reconsideration, holding that Benworth was entitled to a declaration obligating Womply to transmit loan files to Benworth and amending the Interim Award to reflect that this portion of Benworth's counterclaim was granted. (Ex. 14.) The Arbitrator determined that there was "no need for the record to be reopened to grant [Benworth's request for declaratory] relief," and denied all of Benworth's remaining requests for reconsideration. (*Id.* at 4.)

D. The Arbitrator Issues A Final Award Following A Second Evidentiary Hearing And Extensive Briefing On The Calculation Of Finance Charges And Costs Of Collection.

24. On March 8, 2024, Womply submitted a motion for finance charges and collection costs and, in support of its motion, Womply submitted a declaration from Thomas Keyes, the former Director of Finance at Womply, which detailed how the finance charges, fees, and costs were calculated along with supporting exhibits. (Final Award at 56, 60–62.)

25. On March 29, 2024, Benworth submitted its brief in opposition together with a declaration from Michael J. Brychel, a Legal Audit Director at Stuart, Maue, Mitchell & James, Ltd., who Benworth intended to call as an expert witness. (*Id.* at 56–57.) Consistent with the revised schedule, on April 5, 2024, Womply filed its reply and a supplemental witness declaration providing updated figures for attorneys' fees and costs of collection as of the date of the anticipated Final Award. (*Id.* at 57.)

[3] After meeting and conferring with Benworth, Womply consented to a declaratory judgment on the discrete issue of providing loan files to Benworth. (Ex. 14 at 4.)

26. From April 8 to April 11, 2024, the parties participated in an evidentiary hearing via Zoom videoconference concerning the amount of attorneys' fees and costs of collection, as well as the amount of finance charges, that Benworth owed Womply. During the April 2024 evidentiary hearing, Benworth cross-examined Mr. Keyes and Womply cross-examined Mr. Brychel. (*See id.* at 57.) After the April 2024 evidentiary hearing, Benworth submitted its closing brief on April 17, 2024, and Womply submitted its response on April 19, 2024. (*Id.*)

27. On June 11, 2024, the Arbitrator issued a 73-page Final Award.[4] The Final Award reiterated the Arbitrator's findings on Womply's claims and Benworth's affirmative defenses and counterclaims as described in the Interim Award and also analyzed each party's respective arguments on the calculation of finance charges, attorneys' fees, and costs of collection under California law.[5] The Arbitrator held that Womply was not entitled to the 1.5% per month interest rate the parties contracted for and instead adopted Benworth's argument that, under California law, a 10% per annum simple interest rate applied. (*Id.* at 58–60.) The Arbitrator also "thoroughly reviewed Mr. Brychel's report and carefully considered the concerns he has raised" regarding each category of fees and costs Womply sought and reduced Womply's request for attorneys' fees by 15%, amounting to a $1,038,301.52 reduction, and also reduced Womply's requested costs by approximately $170,400. (*Id.* at 66–73.)[6]

[4] On May 9, 2024, JAMS notified the parties that the Final Award would be delayed and asked the parties' to stipulate to extending the time to file the Final Award to May 31, 2024. Both parties agreed. On May 31, 2024, the parties were notified that Arbitrator Brainerd had rendered a decision in the Arbitration, but that decision would not be released until Benworth paid all of its unpaid JAMS fees. (Cheney Decl. ¶ 21.)

[5] The Final Award also granted Benworth's request for declaratory relief with respect to Counterclaim I.iv, providing that "Womply is ordered to promptly transmit copies of borrowers' loan files to Benworth or, in the alternative, to promptly reinstate Benworth's access to Womply's technology platform." (Final Award at 56.)

[6] On June 18, 2024, Benworth moved to correct the Final Award, requesting that the Arbitrator revise the award to clarify that the Arbitrator was not deciding whether Womply would be entitled to post-award interest, which is an issue for this Court to resolve. Womply agreed to Benworth's requested correction. On June 26, 2024, the Arbitrator entered a corrected Final Award reflecting this agreed-upon change. (Final Award at 73 n.21.)

28. Benworth has not paid Womply any amounts due under the Interim Award or Final Award. (Cheney Decl. ¶ 22.)

E. Benworth Manufactures Issues To Oppose Confirmation.

29. Since the beginning of the Arbitration, Benworth has sought to undermine the proceedings, avoid or at least delay a Final Award, and manufacture issues it will undoubtedly raise to oppose confirmation of the Final Award. (*See* Exs. 9–11; Cheney Decl. ¶ 20.)

30. For example, in its Answer, Benworth represented to the Arbitrator and Womply that it was holding Womply's fees "in trust" during the Arbitration. (Ex. 7 ("Jan. 17, 2023 Order") at 2.) That was not true. During the deposition of Benworth's owner and CEO, Bernardo Navarro, Womply learned that, in fact, Mr. Navarro rendered Benworth judgment proof before the Arbitration even began. In the summer of 2021, Mr. Navarro caused Benworth to transfer nearly all of its cash (including the fees owed to Womply) to a Puerto Rico company newly formed by Mr. Navarro and his wife, called Benworth Capital Partners PR LLC ("Benworth PR"). (Cheney Decl. ¶ 18.) When this information came to light, the Arbitrator found that Benworth's representation that it was holding the disputed fees in trust [redacted] Womply has since commenced an action in United States District Court for the District of Puerto Rico to (among other things) unwind that transaction as a fraudulent conveyance. *See Oto Analytics, LLC v. Benworth Capital Partners PR LLC, et al.*, No. 3:23-cv-01034, ECF No. 1 (D.P.R. Jan. 24, 2023).

31. Benworth also repeatedly requested that the Arbitrator stay the Arbitration proceedings based on Benworth's unsupported assertion that the SBA was on the verge of resolving whether any of Womply's fees violated SBA regulations—which was one of Benworth's defenses. Benworth moved for a continuance and/or a stay on that basis on March 10, 2023, on September 13, 2023, and again on November 9, 2023, and the Arbitrator

denied the motion in each instance for lack of support. (Cheney Decl. ¶ 20.) The SBA never made the determination that Benworth first claimed was imminent as early as March 10, 2023. (*Id.*)

32. [redacted]

33. [redacted]

[redacted]

34. On March 16, 2023, JAMS denied Benworth's motion. (Ex. 11.) Neutral attorneys at the JAMS National Arbitration Committee reviewed Benworth's allegations and rejected them, finding that "the many rulings on this case are thorough and balanced" and concluding that "there is no material proof of bias by the arbitrator." (*Id.*).

ARGUMENT

35. Section 9 of the Federal Arbitration Act provides that a party to an arbitration may apply for an order confirming an arbitration award within one year after such award is made. "If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within such award was made." 9 U.S.C. § 9. A court "must grant such an order unless the award is vacated, modified, or corrected." *Id.* Judicial review of an arbitrator's decision is "both limited and highly deferential." *Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727, 730 (9th Cir. 2006). "Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award." *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009) (cleaned up). "The confirmation of an arbitration award is meant to be a summary proceeding." *Int'l Petroleum Prods. & Additives Co., Inc. v. Black Gold, S.A.R.L.*, 418 F. Supp. 3d 481, 487 (N.D. Cal. 2019).

36. This Court should issue an order confirming the Final Award because (1) Section 10 of the Referral Agreement provides that the Final Award can be enforce in "any court," and (2) the Final Award was made in San Francisco County, California.

37. This petition is made within one year of the date of the Final Award, and the Final Award has not been vacated, modified, or corrected.

38. Benworth has not satisfied the Final Award as of the date of this filing.

39. Womply anticipates that Benworth will oppose confirmation based on the same meritless arguments it raised throughout the Arbitration. Those arguments again should fail.

40. Benworth cannot seriously contend that the Arbitrator was not impartial. As Womply detailed in its opposition to the motion to disqualify the Arbitrator, and as JAMS determined, the Arbitrator did not demonstrate any bias against Benworth or in favor of Womply. To the contrary, the Arbitrator issued multiple rulings against Womply, including: (1) denying Womply's motion to compel the production of communications between Benworth's SBA counsel and the SBA (Jan. 17, 2023 Order at 4); (2) denying each of Womply's three requests for summary disposition (Cheney Decl. ¶ 20); (3) ruling in favor of Benworth's interpretation of the Technology Fees, which reduced the amount Womply is owed by tens of millions of dollars (Final Award at 47–50, 52); (4) reopening the Arbitration to allow Benworth to be heard on its claim for declaratory relief under Counterclaim I.iv and granting that requested relief (Ex. 14 at 6–7); (5) holding an additional evidentiary hearing at Benworth's request to determine the appropriate amount of fees and costs Womply was entitled to (*id.*); (6) rejecting Womply's position that the contractual rate of 18% per annum interest applied, and instead adopting Benworth's position that 10% per annum simple interest applied (Final Award 59–60); (7) reducing Womply's award for attorneys' fees by more than $1 million based on Benworth's expert's testimony (*id.* at 66–69, 73); and (8) reducing Womply's award for costs by $170,400 (*id.* at 69–73). *See Certain Underwriters at Lloyd's London v. Argonaut Ins. Co.*, 264 F. Supp. 2d 926, 940 (N.D. Cal. 2003) ("[T]he fact that an arbitrator consistently relied on evidence and reached conclusions favorable to one party, is not enough [to] establish evident partiality.") (cleaned up); *Ruhe v. Masimo Corp.*, 640 F. App'x 685 (9th Cir. 2016) (reversing vacatur of arbitral award where the arbitrator decided the disqualification challenge himself and imposed punitive damages on defendant for making the challenge, because the arbitrator's rulings did not "exceed his powers or rise to the level of manifest disregard of the law").

41. Nor is the Arbitrator's decision not to stay the Arbitration a basis to vacate the Final Award. During the Arbitration, Benworth relied on *Naing International Enterprises, Ltd. v. Ellsworth Associates, Inc.*, 961 F. Supp. 1, 4 (D.D.C. 1997), in seeking a stay. However, this Arbitration bears no resemblance to that case. In *Naing*, the SBA's Inspector General had recommended that the plaintiff be terminated from its lending program and set a fixed date for the SBA to take action on the recommendation less than a month after the scheduled date for the arbitration hearing; despite this, the arbitrator refused "to wait for a reasonable period upon SBA action on the [] investigation." *Id.* at 4–5. Here, there is no pending SBA recommendation, no fixed date for SBA action, and the Arbitrator here did not issue the Final Award for more than a year after Benworth first claimed the SBA was on the precipice of making a determination on Womply's fees that Benworth said would impact the outcome of the case.

42. Womply reserves the right to respond to any arguments Benworth may raise in opposing confirmation.

43. Womply also reserves the right to seek an additional award of fees and costs against Benworth should it refuse to comply with the Final Award. Such additional fees and costs are appropriate. "[A]n unjustified refusal to abide by an arbitrator's award" "may equate an act taken in bad faith, vexatiously, or for oppressive reasons," and therefore merit an award of attorneys' fees. *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1104 (9th Cir. 2011) (cleaned up). Such an award "serves to deter unjustified refusals to comply with arbitration awards and to compensate [parties] for the cost of going to court to obtain relief than an arbitrator has already determined is legally owed to them." *Bd. of Trs. of Carpenters Health & Welfare Tr. Fund for Cal. v. Cruz*, 2008 WL 11518471, at *5 (N.D. Cal. July 28, 2008).

PRAYER FOR RELIEF

Womply respectfully requests that the Court:

44. Confirm the Final Award and enter judgment in conformity;

45. Award Womply attorneys' fees and costs in the amount of $6,256,665.04 as specifically set forth in the Final Award;

46. Award Womply finance charges calculated at 10% per annum simple interest, which as of May 30, 2024 were $25,363,697.68, as specifically set forth in the Final Award;

47. Award Womply post-award pre-judgment[7] and post-judgment interest;[8]

48. Award Womply attorneys' fees and costs related to confirmation of the Final Award; and

49. Grant any other relief this Court may deem proper.

Dated: July 1, 2024

WILLKIE FARR & GALLAGHER LLP

By: <u>*/s/ Alexander L. Cheney*</u>
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[7] "State law governs the rate of prejudgment interest on an arbitration award." *Sayta v. Martin*, 2018 WL 4373034, at *4 (N.D. Cal. Sept. 12, 2018). "Under California law, a breach of contract accrues interest at ten percent from the date the arbitrator renders an award." *VoXcell Cloud LLC v. Decision Scis. Int'l Corp.*, 2022 WL 2277501, at *6 (S.D. Cal. June 22, 2022).

[8] Once judgment issues, if Benworth does not promptly pay the amount due, Womply will be entitled to "post-judgment interest at a rate of ten percent per annum." *Fraley v. Travelers Prop. Cas. Co. of Am.*, 840 F. App'x 112, 114 (9th Cir. 2020).