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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 RESPONSE TO
WOMPLY'S PETITION TO CONFIRM
ARBITRATION AWARD**

Hon. Araceli Martinez-Olguin

1 Benworth files this response to Womply's Petition to Confirm Arbitration Award (the "Petition")
2 (ECF No. 1) out of an abundance of caution, to preserve its rights should the Court deny Benworth's
3 Administrative Motion for Clarification/Extension of the Deadline to Respond (ECF No. 26). Benworth
4 reserves the right to oppose confirmation based on new grounds that arise after the filing of this response.
5 For the reasons outlined below, the Court should deny Womply's Petition until it considers and
6 adjudicates Benworth's forthcoming motion to vacate the arbitration award.

7 During the COVID-19 pandemic, the Small Business Administration ("SBA") implemented the
8 Paycheck Protection Program ("PPP"), so that small businesses could keep up with payroll and avoid
9 layoffs during and immediately after the pandemic. Benworth, a lender licensed with the SBA, enlisted
10 Womply to help it prepare and refer PPP loan applications to Benworth.

11 A dispute arose between Benworth and Womply. Pursuant to their agreements, the parties aimed
12 to resolve their differences in Arbitration. In a JAMS arbitration styled *Oto Analytics, Inc. v. Benworth*
13 *Capital Partners LLC*, JAMS Ref. No. 1210038203, the arbitrator issued an interim award. After
14 additional presentations by the parties, the arbitrator issued a final award on May 30, 2024. Almost a
15 month later, on June 26, 2024, the arbitrator amended the final award (the "Amended Final Award").

16 On July 1, 2024, Womply filed its Petition to Confirm Arbitration Award (the "Petition"). ECF
17 No. 1. That same day, Womply's counsel emailed Benworth's counsel requesting that Womply accept
18 service via email. To induce Benworth to accept, Womply included a waiver of service of summons form,
19 which Womply edited to include information related to the case such as the time period from which the
20 60-day period to respond would occur (the "Waiver"). The Waiver required Benworth to respond to the
21 Petition within 60 days of July 1, 2024. After conferring via email with Womply's counsel, Benworth
22 agreed to accept service on July 5, 2024. The final Waiver, which Womply filed with the Court (ECF
23 No. 15), memorialized an understanding between the parties that Womply would avoid the effort and
24 expense of serving Benworth, and in exchange Benworth would have "60 days from 7/5/2024" to respond
25 to the Petition. Benworth's response is due on September 3, 2024.

26 Unfortunately, once the benefit of the Waiver to Womply had accrued, Womply decided that it
27 no longer desires to wait for Benworth to respond within the 60-day timeframe. Beyond that, Womply
28 asks this Court to address the Petition to Confirm an arbitration award before the Court decides whether

the award is subject to vacatur under the Federal Arbitration Act (“FAA”). This Court cannot confirm an award that is vacated. Nor may it confirm an award before the period of time to seek vacatur and later adjudicate its merits. The FAA allows one year for a party to seek confirmation of an arbitration award and three months for a party to seek vacatur. 9 U.S.C.A. §§ 9,12. Under the FAA, the grounds to oppose confirmation are essentially the same grounds for vacatur. *See* 9 U.S.C. § 9 (stating that the FAA requires a court to confirm an arbitration award only if it has not been vacated, modified, or corrected); *Bd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty. v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983) (limiting defenses to confirmation to only those raised in timely petitions to vacate). It would be both legally erroneous and impractical to adjudicate the Petition to Confirm at this time before Benworth has had its statutory rights to submit its vacatur petition. In an abundance of caution, however, Benworth adopts all the grounds in its forthcoming and timely submitted Petition to Vacate as reasons to deny confirmation of the award.

Requiring Benworth to respond before the statutory time has lapsed will significantly prejudice Benworth. The Amended Final Award is more than 70 pages in length and the issues it attempts to resolve are highly technical. Even two weeks are insufficient to ascertain whether additional defenses may exist under existing circuit precedent.

Dated: July 23, 2024

Respectfully submitted,

/s/ Simon S. Grille

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