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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-03975-AMO

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

Hon. Araceli Martínez-Olguín

Pursuant to Civil Local Rules 6-3 and 7-11, Petitioner respectfully submits this opposition to Respondent’s Administrative Motion for Clarification of Deadline and/or for Extension of Time to Respond to Womply’s Petition (“Mot.” or “Motion”; ECF No. 26).¹

PRELIMINARY STATEMENT

For more than three years, Benworth has employed every conceivable tactic and procedural mechanism to prevent Womply from recovering the millions of dollars it is owed. After years of hard-fought arbitration with Benworth, Womply finally obtained an award for approximately \$118 million in damages, which it now seeks to confirm. With its Motion, Benworth asks this Court to allow it to avoid the consequences of its decision to deliberately disregard the rules and to give it a lengthy and unjustified extension on its time to respond. The Motion should be denied.

Benworth has had more than enough time to brief any opposition to confirmation. Benworth first learned that the Arbitrator rejected its defenses and awarded Womply more than \$86 million in damages on December 23, 2023—*more than seven months ago*—when the Arbitrator issued a 55-page interim award. (Petition ¶¶ 20–21.) The parties then spent several months litigating the narrow issue of calculating Womply’s entitlement to attorneys’ fees, other expenses, and interest, which the Arbitrator resolved on June 11, 2024. (*Id.* ¶¶ 24–27.) The Arbitrator issued the Final Award—which did little more than combine the December 23, 2023 and June 11, 2024 decisions—on June 26, 2024. (*Id.* ¶ 27 n.6.) The Final Award is thorough, well-reasoned, and balanced. (*Id.*, Ex. 3.)

Womply promptly filed its Petition, and Benworth accepted service on July 5, 2024. Benworth’s response to the Petition was due on July 19, 2024. In response to Benworth’s first request for an extension, Womply agreed to extend Benworth’s deadline to July 23, 2024 without receiving anything in return. (Declaration of Joshua S. Levy (“Levy Decl.”) ¶ 9.) The parties filed a stipulated request to extend the deadline to July 23, which the Court granted. (ECF No. 25.) However, the Court warned that “future requests to extend deadlines must comply with the Court’s

¹ Capitalized terms have the same meanings as in Womply’s Petition to Confirm Arbitration Award and for Entry of Judgment (“Petition”; ECF No. 1).

1 civil standing order, which requires requests to be submitted at least one week in advance. The
2 Court will not make further exceptions to that requirement.” (*Id.*) Benworth ignored that warning.

3 On July 22, just *one day* before the Court-ordered deadline, Benworth filed its Motion asking
4 the Court for another extension to at least September 3, 2024—or as late as September 26, 2024—
5 because, it claims, “it has not been afforded sufficient time to respond to the Petition.” (Mot. at 1
6 n.1.) But Benworth fails to explain why it needs more than two months to respond to a 14-page
7 Petition, nor does it identify any issues it would brief during that time. That is because Benworth
8 has no good faith basis to oppose confirmation, and its only goal is more delay.² This is made clear
9 by the barebones “response” that Benworth filed on July 23, which does not even attempt to state a
10 basis for the Court to deny confirmation, let alone to satisfy Benworth’s “heavy burden.” *Oxford*
11 *Health Plans LLC v. Sutter*, 569 U.S. 564, 568–69 (2013) (a party seeking vacatur “bears a heavy
12 burden” and “courts may vacate an arbitrator’s decision only in very unusual circumstances.”).

13 Allowing Benworth to flout the rules and cause further unnecessary delay would be
14 prejudicial to Womply. As explained in the Petition, Benworth’s principal, Bernardo Navarro,
15 rendered Benworth judgment proof by transferring nearly all of Benworth’s cash (including the fees
16 owed to Womply) to a Puerto Rico company newly formed by Mr. Navarro and his wife, called
17 Benworth Capital Partners PR LLC (“Benworth PR”). (Petition ¶ 30.) Womply has sued Benworth,
18 Benworth PR, and the Navarros in the United States District Court for the District of Puerto Rico to
19 (among other things) unwind that transaction as a fraudulent conveyance. (*Id.*) The Federal Reserve
20 Bank of San Francisco recently filed a lawsuit in the same court asserting nearly identical claims
21 against Benworth and the Navarros. *See Fed. Reserve Bank of S.F. v. Benworth Capital Partners*
22 *PR LLC, et al.*, No. 3:24-cv-01313-MAJ, (D.P.R. July 10, 2024), ECF No. 1. Womply is deeply
23 concerned that any delay will be used by the Navarros to conceal or dispose of assets to avoid the
24 judgment of this Court. Womply respectfully requests that this Court deny the Motion.

25
26 ² As explained in the Petition, Benworth has sought delay at every opportunity, including by seeking
27 to stay or continue the Arbitration three times, trying to disqualify the Arbitrator right before the
28 Arbitration hearing, and repeatedly seeking reconsideration of the Arbitrator’s rulings. (Petition
¶¶ 22–23, 29–34, 40–41.)

ARGUMENT

It is settled law that a petition to confirm an arbitration award under the FAA is a motion, not a pleading. 9 U.S.C. § 6 (“Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of *motions*.”) (emphasis added); *see also S.W. Reg’l Council of Carpenters v. T.J. Hale Co.*, 2010 WL 11597957, at *1, *3 (C.D. Cal. June 16, 2010) (treating petition to confirm arbitration award as a “motion to confirm”) (citing 9 U.S.C. §§ 6, 9). Treating a confirmation petition as a motion makes sense given that “[t]he confirmation of an arbitration award is meant to be a summary proceeding.” *Int’l Petroleum Prods. & Additive Co. v. Black Gold, S.A.R.L.*, 418 F. Supp. 3d 481, 487 (N.D. Cal. 2019) (citing *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1105 (9th Cir. 2003)); *see also Oxford*, 569 U.S. at 568–69 (2013) (“If 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.”) (cleaned up). Because Womply’s Petition is treated as a motion, the 14-day deadline in Civil Local Rule 7-3 applies to Benworth’s response, as this Court made clear in its July 16 Order. (ECF No 22.) Benworth accepted service of the Petition on July 5, 2024 (Levy Decl. ¶ 6), and so its response was due on July 19. *See* Civil L.R. 7-3(a). The Court extended that deadline to July 23. (ECF No. 25.)

In its Motion, Benworth raises two meritless arguments in the hopes of causing further delay. **First**, Benworth misconstrues the standard Waiver of the Service of Summons (the “Form”) prepared by the Administrative Office of the Courts to argue that it is entitled to 60 days to respond to the Petition. (Mot. at 2.) That Form provides that a defendant accepting service of a “*summons and complaint*” would have “60 days” to “file and serve an *answer* or a *motion under Rule 12*.” (Mot. at 2 (emphases added) & Mot. Ex. 1 at 2.) But the Petition is not a “summons and complaint,” and Benworth’s opposition is not “an answer or a motion under Rule 12,” so this language does not enlarge the Civil Local Rule’s 14-day deadline for Benworth to oppose the Petition. *See Azod v. Robinson*, 2022 WL 18142560, at *2 (C.D. Cal. Nov. 9, 2022) (holding that a “motion to dismiss is an inappropriate vehicle for responding to the motion to confirm the arbitration award and should be denied on that basis”) (collecting cases). **Benworth knows this**. That is why it titled its July 23

1 response to the Petition a “**Response**” (ECF No. 28 (emphasis added)), and not an answer or motion
 2 to dismiss. Because the extension of time in the Form does not apply to the Petition, it cannot be
 3 construed as a “propos[al]” to grant Benworth an extension, as Benworth contends. (Mot. at 2.)

4 Even if the Form could be construed as a proposal to extend the deadline (it cannot be), it
 5 still would be ineffective. That is because Benworth’s time to respond to the Petition can only be
 6 extended by an order of the Court. *See* Civil L.R. 6-1(b) (requiring court order to enlarge time that
 7 “involves papers required to be filed or lodged with the Court”). In addition, the Form was not
 8 signed by Womply, which would be required for any “stipulation” requesting an order enlarging
 9 Benworth’s time to respond. *See* Civil L.R. 6-2, 7-12 (requiring that stipulation requesting an
 10 extension of time be “signed by all affected parties or their counsel”). ***Benworth knows this too.***
 11 That is why it sought its first extension by filing to a stipulated request “pursuant to Civil Local
 12 Rules 6-2 and 7-12,” signed by counsel for all parties. (ECF No. 24.)

13 ***Second***, Benworth asks this Court to disregard established precedent and hold that the FAA
 14 provides Benworth with three months to respond to the Petition. (Mot. at 1.) Benworth contends
 15 that the FAA gives it “three months after delivery of the Amended Final Award” to move to vacate
 16 the award, and therefore Benworth also must have three months to “respond to Womply’s Petition.”
 17 (*Id.* at 3.) Benworth fails to disclose that the Ninth Circuit and other courts have rejected this
 18 argument. *See PMS Distributing Co., Inc. v. Huber & Suhner, A.G.*, 981 F.2d 1259 (9th Cir. 1992)
 19 (table). In *PMS Distributing*, “PMS did not timely oppose the motion to confirm” an arbitration
 20 award but “argue[d] that it timely filed its motion to vacate the arbitration award within three months
 21 of the award’s filing.” *Id.* The Ninth Circuit held that PMS’s motion to vacate could not be heard
 22 on the merits, because it “failed timely to assert” its objections to the “motion seeking confirmation,”
 23 and it could not use a subsequent motion to vacate to disturb confirmation. *Id.* Where, as here, a
 24 party promptly moves to confirm the arbitral award, the “motion to confirm puts the other party to
 25 his objections,” which “cannot idly stand by, allow the award to be confirmed and judgment thereon
 26 entered, and then move to vacate the award just as though no judgment existed.” *Id.* (quoting *The*
 27 *Hartbridge*, 57 F.2d 672, 673 (2d Cir. 1932) (per curiam)); *see also Ingaseosas Int’l Co. v.*

1 *Aconcagua Inv. Ltd.*, 479 F. App'x 955, 959 (11th Cir. 2012) (same).³ Put simply, the three month
 2 deadline in the FAA is the outside date by which a party must move to vacate an award, but it does
 3 not extend a party's deadline for responding to an earlier-filed petition to confirm an award.

4 Finally, Benworth does not even try to meet its burden of showing "good cause" to justify
 5 an additional extension of its time to respond to the Petition. *See* Fed. R. Civ. P. 6(b)(1), 16(b)(4).
 6 Benworth's failure to identify a single issue it would brief if granted additional time is inexcusable,
 7 especially given that Benworth has had the Interim Award for more than seven months and the Final
 8 Award for more than a month. And, although Benworth's counsel attempts to shift blame for its
 9 failure to comply with the rules to Womply (Mot. at 1-2), Benworth cannot deny that Womply
 10 promptly and fully disclosed all court filings, notices, and orders in this case. (*See* Levy Decl. ¶ 7,
 11 Ex. 3.) Moreover, Womply's counsel expressly advised Benworth's counsel **before** the original
 12 July 19 deadline that the "due date for any opposition or reply papers not yet filed shall be calculated
 13 in accordance with Civil Local Rule 7-3," which "provides 14 days to file any opposition," making
 14 Benworth's opposition due on July 19. (Levy Decl. ¶ 9, Ex. 3.) To the extent Benworth finds itself
 15 in this position because its counsel "did not bother reading" the Civil Local Rules or the Court's
 16 Orders and Notice, there is "no reason for the federal courts to excuse such professional neglect."
 17 *Speiser, Krause & Madole P.C. v. Ortiz*, 271 F.3d 884, 886 (9th Cir. 2001) (cleaned up; collecting
 18 cases). There simply is no good cause to grant Benworth another extension.

19 CONCLUSION

20 For the foregoing reasons, this should Court deny Benworth's Motion in its entirety.

21 Dated: July 26, 2024

WILLKIE FARR & GALLAGHER LLP

22 By: /s/ Alexander L. Cheney

Alexander L. Cheney

23 Stuart R. Lombardi

24 Joshua S. Levy

25 *Attorneys for Petitioner Oto Analytics, LLC*

26 _____
 27 ³ Benworth's authority does not support its position. *See Bhd. of Teamsters & Auto Truck Drivers*
 28 *Local No. 70 v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983) (affirming confirmation of arbitral
 award because party "did not move to vacate the award within the prescribed time").

CERTIFICATE OF SERVICE

The undersigned certifies that on July 26, 2024, the foregoing document was filed with the Clerk of the Court using CM/ECF, which sent notices to all parties receiving notifications through the CM/ECF system.

Dated: July 26, 2024

By: /s/ Alexander L. Cheney

Attorney for Petitioner Oto Analytics, LLC