

1 WILLKIE FARR & GALLAGHER LLP
2 Alexander L. Cheney (SBN 302157)
3 acheney@willkie.com
4 333 Bush Street
San Francisco, CA 94104
(415) 858-7400

5 Stuart R. Lombardi (admitted *pro hac vice*)
6 slombardi@willkie.com
7 787 7th Avenue
New York, NY 10019
(212) 728-8000

8 Joshua S. Levy (admitted *pro hac vice*)
9 jlevy@willkie.com
10 1875 K Street, N.W.
Washington, DC 20006-1238
11 (202) 303-1000

12 *Attorneys for Petitioner*
13 Oto Analytics, LLC
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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 OTO ANALYTICS, LLC,

20 Petitioner,

21 v.

22 BENWORTH CAPITAL PARTNERS LLC

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

**WOMPLY’S REPLY IN FURTHER
SUPPORT OF ITS PETITION TO
CONFIRM ARBITRATION AWARD
AND FOR ENTRY OF JUDGMENT**

Hon. Araceli Martínez-Olguín

Pursuant to Civil Local Rule 7-3(c), Womply respectfully submits this reply in further support of its Petition to Confirm Arbitration Award and for Entry of Judgment (“Petition”; ECF No. 1).¹

In its two-page response to Womply’s Petition (“Response” or “Resp.”; ECF No. 28), Benworth failed to identify any reason why the Arbitrator’s Final Award should not be confirmed, despite carrying a “heavy burden” of opposing confirmation. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568–69 (2013) (a party seeking vacatur “bears a heavy burden” and “courts may vacate an arbitrator’s decision only in very unusual circumstances”). Instead, Benworth argues that the Court “cannot” even consider Womply’s Petition until Benworth has filed a motion to vacate the award, and that the Federal Arbitration Act (“FAA”) provides Benworth with a “statutory right[]” to file a motion to vacate within three months of the Final Award. (Resp. at 2.) Benworth is wrong.

It is settled law that a party opposing confirmation does not have a “statutory right[]” to a three-month stay under the FAA while it considers whether and to what extent to move to vacate the award. That is because “[t]he statutory deadline for giving notice of a motion to vacate sets an **outer bound**; it does not impose a three-month delay for the benefit of an arbitration’s loser.” *McLaurin v. The Terminix Int’l*, 13 F. 4th 1232, 1242 (11th Cir. 2021) (emphasis added). Thus, the courts that have considered the argument Benworth makes here—including the Ninth Circuit—have rejected it. *See, e.g., PMS Distributing Co. v. Huber & Suhner, A.G.*, 981 F.2d 1259 (9th Cir. 1992) (table) (refusing to consider merits of motion to vacate filed within three months of an award because the moving party failed to timely oppose an earlier-filed motion to confirm); *McLaurin*, 13 F.4th at 1242 (holding that “the FAA does not impose an automatic three-month stay on confirmation,” and confirming lower court’s decision granting petition to confirm arbitration award before the respondent filed a motion to vacate); *The Hartbridge*, 57 F.2d 672, 673 (2d Cir. 1932) (stating that three-month deadline to move to vacate an award “sets an outside limit within which a notice to vacate must be served; it does not say that such a motion may be made at any time within

¹ Capitalized terms have the same meanings as in Womply’s Petition.

the three months even though the award has gone into judgment”). In other words, to the extent Benworth opposed confirmation, it was required to make the necessary showing in its July 23, 2024 response to the Petition, and it failed to do so. Benworth does not cite any authority to the contrary, nor are we aware of any.

Benworth’s claim of “prejudice” for having to oppose the Petition under the already extended deadline (Resp. at 2)² is unsupported and not credible. Benworth does not explain why it could not timely brief its arguments, nor does it even attempt to preview any arguments it could make against confirmation if it had more time. Benworth simply states that the “Final Award is more than 70 pages in length and the issues it attempts to resolve are highly technical” (*id.* at 2), but it would not be appropriate for this Court to examine the factual findings and legal rulings in the Final Award. The grounds on which the Court may vacate an award are statutorily limited by the FAA to *only* the following:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a); *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); *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552

² As explained in Womply’s Opposition to Benworth’s Administrative Motion (ECF No. 35), Benworth’s original deadline to respond to the Petition was July 19, 2024, pursuant to the FAA and Civil Local Rule 7-3. The parties filed a stipulated request to enlarge Benworth’s time to respond to July 23, 2024, which the Court granted. (ECF Nos. 24–25.) There is no good cause to give Benworth additional time to respond to the Petition.

1 U.S. 576, 586 (2008) (holding that the bases to vacate an award under Section 10 of the FAA are
 2 “exclusive”); *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009) (“Our review is limited by the
 3 [FAA], which enumerates limited grounds on which a federal court may vacate, modify, or correct
 4 an arbitral award. Neither erroneous legal conclusions nor unsubstantiated factual findings justify
 5 federal court review of an arbitral award.”) (cleaned up); *Int’l Petroleum Prods. & Additive Co. v.*
 6 *Black Gold, S.A.R.L.*, 418 F. Supp. 3d 481, 487 (N.D. Cal. 2019) (“The confirmation of an
 7 arbitration award is meant to be a summary proceeding.”) (citing *G.C. & K.B. Invs., Inc. v. Wilson*,
 8 326 F.3d 1096, 1105 (9th Cir. 2003)). None of these grounds require a close examination of the
 9 Final Award or the purportedly “technical” issues it resolves.

10 Moreover, this Court may vacate an award for one or more of the reasons set forth in Section
 11 10 of the FAA only “upon the application of any party to the arbitration,” 9 U.S.C. § 10(a), but
 12 Benworth has not made such an application. Indeed, Benworth’s Response does not even *suggest*
 13 that any of the bases upon which an award may be vacated apply here. Under these circumstances,
 14 this Court should confirm the Final Award immediately. *See id.* U.S.C. § 9 (providing that upon an
 15 application to confirm an award, “the court *must* grant such an order unless the award is vacated,
 16 modified, or corrected”) (emphasis added); *Pacer Constr. Holdings Corp. v. Pelletier*, 2020 WL
 17 2571199 (S.D. Cal. May 21, 2020) (“After Respondents failed to timely oppose the Petition [to
 18 confirm arbitration awards], the Court, on February 28, 2020, granted Petitioner’s unopposed
 19 Petition and entered a final judgment confirming the Awards . . .”).

20 For the foregoing reasons and the reasons set forth in the Petition, Womply respectfully
 21 requests that this Court enter a final judgment confirming the Final Award, awarding Womply post-
 22 award prejudgment and post-judgment interest, and awarding Womply its attorneys’ fees and costs
 23 related to confirmation of the Final Award.³

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 27 ³ Following confirmation of the Final Award, Womply reserves the right to submit support for the
 28 amount of attorneys’ fees and costs related to confirmation of the Final Award to which it is entitled.
 (See Petition ¶ 13.)

1 Dated: July 29, 2024

Respectfully submitted,

2 By: /s/ Alexander L. Cheney

3 Alexander L. Cheney

4 Stuart R. Lombardi

Joshua S. Levy

5 *Attorneys for Petitioner Oto Analytics, LLC*

CERTIFICATE OF SERVICE

The undersigned certifies that on July 29, 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 29, 2024

By: /s/ Alexander L. Cheney

Attorney for Petitioner Oto Analytics, LLC