

1 Arbitration Award, ECF No. 51 at 2.) Plaintiff is the owner and CEO of United Bakery, Inc.
2 (Decl. in Supp. of Dinh Nguy's Admin. Verified Compl., ECF No. 18-1 at 2.) Defendant Gerd
3 Mang and Cindy Chananie are the owners of Cinch Bakery Equipment, LLC. (Pl.'s First Am.
4 Compl., ECF No. 18 at 5.)

5 On October 4, 2013, Plaintiff initiated the instant case in California state court. (ECF No.
6 1-1 at 2.) Thereafter, on November 1, 2013, Defendants filed a Notice of Removal to the Eastern
7 District of California. (ECF No. 1 at 1.) Defendants subsequently filed a motion to compel
8 arbitration and/or dismiss for improper venue. (ECF No. 4.) On January 10, 2014, Magistrate
9 Judge Kendall J. Newman denied the motion to dismiss, granted the motion to compel arbitration,
10 and stayed the instant action pending resolution of the arbitration. (ECF No. 12.) On or about
11 August 15, 2014, Plaintiff commenced the arbitration proceeding against Defendants through the
12 American Arbitration Association (the "AAA"). (Status Report by Defs., ECF No. 20 at 2.)

13 On April 1, 2015, after the preliminary hearing, the arbitrator ordered Plaintiff to: (1) add
14 United Bakery as a party to the instant action; and (2) find counsel to represent United Bakery.¹
15 (ECF No. 44-3 at 3.) The arbitrator ordered that Plaintiff secure an attorney for United Bakery by
16 April 8, 2015. (ECF No. 44-3 at 5.) Plaintiff did not meet this deadline. (ECF No. 44-3 at 5.)
17 The arbitrator extended the deadline to April 23, 2015, and Plaintiff again did not meet this
18 deadline. (ECF No. 44-3 at 5.) Consequently, on April 29, 2015, the arbitrator issued an order
19 stating:

20 [B]ased on all of the facts set forth herein, the arbitration complaint is hereby
21 dismissed without prejudice for a period of 20 days. If at the end of 20 days
22 claimants have failed to provide AAA with an official letter of representation in
writing from an attorney authorized to practice law in the State of New Jersey the
complaint shall be dismissed with prejudice.

23 (ECF No. 44-3 at 5.) Plaintiff did not reply after 20 days and accordingly, on May 26, 2015, the
24 arbitrator signed an order dismissing Plaintiff's complaint with prejudice. (ECF No. 44-3 at 5.)
25 Defendants now seek entry of this award. (ECF No. 44.)

26 ¹ The arbitrator does not provide an explanation as to why United Bakery is an indispensable party. However,
27 Plaintiff names United Bakery, Inc. as a co-Plaintiff in his declaration in support for a continuance (ECF No. 48 at ¶
28 2) and in his opposition (ECF No. 51 at 1). Plaintiff also names United Bakery, Inc. as the claimant in his demand
for arbitration (ECF No. 18-3 at 2) and on numerous occasions states that he is bringing his claims "on behalf of
United Bakery" (*see e.g.*, ECF No. 48 at ¶ 13).

1 While Plaintiff failed to respond to instructions from the arbitrator, he did continue to file
2 motions in federal court. On April 22, 2015, Plaintiff filed three documents before Judge
3 Newman, styled as a “verified complaint for permanent injunction,” a “motion for
4 reinstatement,” and a “notice of rescission.” (ECF No. 43 at 3.) Plaintiff filed these documents
5 despite the existing motion to stay pending the parties’ ongoing arbitration proceedings. (ECF
6 No. 43 at 3.) Judge Newman held that all of Plaintiff’s filings were stricken from the record.
7 (ECF No. 43 at 6.) Thereafter, on May 22, 2015, and June 11, 2015, Plaintiff filed two motions
8 to quash. (ECF No. 34; ECF No. 36.) Judge Newman held that these two motions were
9 frivolous and ordered them stricken from the record. (ECF No. 43 at 8.) In or around April 2015
10 and June 2015, Plaintiff also filed three other documents, one titled as a “notice of removal back
11 into the United States District Court, Eastern District of California,” (ECF No. 23), another
12 designated as a “notice to the American Arbitration Association to cease and desist,” (ECF No.
13 29), and the final one identified as a “final answer” (ECF No. 41). Judge Newman held that all
14 three of these filings were frivolous and violated the court’s order to stay. (ECF No. 43 at 8.)
15 Consequently, Judge Newman ordered these three filings stricken from the record and cautioned
16 Plaintiff that any further filings before the arbitration proceeding concluded could prompt
17 monetary sanctions against Plaintiff as well as an involuntary dismissal. (ECF No. 43 at 8.)

18 On July 2, 2015, Defendants filed a motion to confirm arbitration award before Judge
19 Newman, asking the court to confirm the arbitrator’s award in which she dismissed Plaintiff’s
20 arbitration complaint with prejudice. (ECF No. 44.) Judge Newman ordered that Plaintiff file an
21 opposition no later than September 3, 2015. (ECF No. 46.) On September 3, 2015, Plaintiff
22 filed a notice of substitution of attorney and requested a continuance to allow his attorney to
23 prepare a written opposition. (ECF No. 47; ECF No. 48 at 3.) Judge Newman approved this
24 request and referred the matter to this Court. (ECF No. 49.) On September 23, 2015, Plaintiff’s
25 counsel filed an opposition to Defendants’ motion to confirm arbitration award. (ECF No. 51.)
26 Defendants filed a reply on October 1, 2015. (ECF No. 52.)

27 ///

28 ///

1 **II. STANDARD OF LAW**

2 Section 9 of the Federal Arbitration Act (“FAA”) authorizes a party to an arbitration
3 agreement to apply for an order confirming an arbitration award “any time within one year after
4 the award.” 9 U.S.C. § 9. “[T]he court must grant such an order unless the award is vacated,
5 modified, or corrected as prescribed in sections 10 and 11 of this title.” *Id.*

6 “[T]he [FAA] allows a federal court to correct a technical error, to strike all or a
7 portion of an award pertaining to an issue not at all subject to arbitration, and to vacate an award
8 that evidences affirmative misconduct in the arbitral process or the final result or that is
9 completely irrational or exhibits a manifest disregard for the law.” *Kyocera Corp. v. Prudential—*
10 *Bache Trade Servs., Inc.*, 341 F.3d 987, 997–98 (9th Cir. 2003). However, the court’s review of
11 an arbitration award is “extremely limited.” *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d
12 1401, 1403 (9th Cir. 1992) (citing *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056,
13 1060 (9th Cir. 1991)). Courts are deferential to arbitrators’ decisions. *Romero v. Citibank USA*,
14 No. 1:07–CV–00549, 2007 WL 2688848, at *3 (E.D. Cal. Sept.13, 2007) (citing *Rostad & Rostad*
15 *Corp. v. Inv. Mgmt. & Research, Inc.*, 923 F.2d 694, 697 (9th Cir. 1991)). “[A]rbitrators exceed
16 their powers not when they merely interpret or apply the governing law incorrectly, but when the
17 award is completely irrational, or exhibits a manifest disregard of law.” *Kyocera Corp.*, 341 F.3d
18 at 997 (internal citations and quotations omitted).

19 **III. ANALYSIS**

20 Defendants petition the Court to confirm the final award issued by the arbitrator on May
21 26, 2015. In response, Plaintiff opposes this request and essentially alleges that the Court should
22 vacate the arbitration award because: (1) the arbitrator’s order to dismiss Plaintiff’s claim with
23 prejudice does not constitute an award pursuant to Title 9 of the United States Code section 11(b);
24 and (2) the arbitrator exceeded her power by dismissing Plaintiff’s case with prejudice because
25 she “refused to hear evidence pertinent and material to the controversy.” (ECF No. 51 at 3–7.)

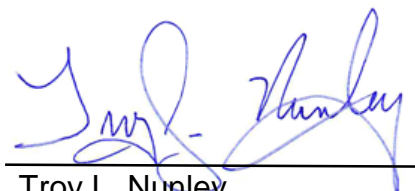
26 Notices of a motion to vacate, modify, or correct an award “must be served upon the
27 adverse party or his attorney within three months after the award is filed or delivered.” 9
28 U.S.C.A. § 12. A motion to vacate an arbitration award after the three months prescribed time is

1 not permitted, even if filed as part of an opposition to a motion to confirm an arbitration award or
2 to assert new claims. *Brotherhood of Teamsters & Auto Truck Drivers v. Celotex Corp.*, 708 F.2d
3 488, 490 (9th Cir. 1983) (“[An] unsuccessful party at arbitration who did not move to vacate the
4 award within the prescribed time may not subsequently raise, as affirmative defenses in a suit to
5 enforce the award, contentions that it could have raised in a timely petition to vacate the award.”).

6 Here, on September 23, 2015, Plaintiff filed an opposition, which is in essence a petition
7 to vacate the arbitration award. (ECF No. 51.) This filing date was nearly four months after the
8 arbitrator signed the arbitration award on May 26, 2015. “The clear import of this statutory [three
9 month time limit] is that challenges to an arbitration award are to be brought via a timely motion
10 to vacate, not by way of defenses based upon the statutory grounds for vacating raised in response
11 to a motion to confirm.” *Carpenters 46 Northern California Counties Conference Bd. v.*
12 *Meddles*, 535 F. Supp. 775, 778–79 (N.D. Cal. 1981). Allowing a respondent to ignore an award
13 unfavorable to him or her by failing to move to vacate it in a timely fashion, and thereafter seek to
14 upset the award when the petitioner brings a motion to confirm or enforce it, would impair the
15 fundamental policy of this rule. *Id.* at 779. Accordingly, Plaintiff’s defenses stated within its
16 opposition motion are barred by the statute of limitations. *See Sheet Metal Workers’ Intern.*
17 *Ass’n, Local No. 252 v. Standard Sheet Metal, Inc.*, 699 F.2d 481, 483 (9th Cir. 1983) (holding
18 that the failure to move to vacate an arbitration award within the three month time period bars a
19 moving party from bringing future defenses). Plaintiff cites no authority that would exempt his
20 defenses from 9 U.S.C. § 12. Accordingly, Plaintiff may not move to vacate Defendants’
21 arbitration award through his opposition to Defendants’ motion to confirm the award. Moreover,
22 because the Court must grant a confirmation order “unless the award is vacated, modified, or
23 corrected” pursuant to 9 U.S.C. § 9, the Court hereby grants Defendants’ motion to confirm
24 arbitration award and consequently dismisses Plaintiff’s claims with prejudice.

25 IT IS SO ORDERED

26 Dated: May 4, 2016

27 

28
Troy L. Nunley
United States District Judge