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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JACK CORRY,
Petitioner,
v.
PUROSYSTEMS, INC., a Florida
corporation,
Respondent.

No. 2:13-cv-0873 TLN KJN

ORDER

This matter is before the Court on Respondent Purosystems, Inc.'s ("Respondent") motion to dismiss or, in the alternative, transfer venue. (ECF No. 7.) Petitioner Jack Corry ("Petitioner") opposes the motion. (ECF No. 8.)

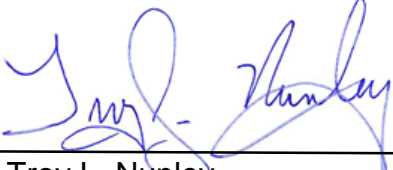
Under 9 U.S.C. § 12 "[a] [n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. . . ." Here, Respondent argues, and Petitioner does not dispute, that Petitioner failed to serve its motion to vacate within three months of the underlying arbitration award in this case. *See Lafarge Counseils Et Etudes S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986) (the "three month notice requirement of section 12 for appeal of an award on section 10 or 11 grounds would be meaningless if a party to the arbitration proceeding could

1 bring an independent action asserting such claims outside of the statutory time period provided
2 for in section 12”); *Brotherhood of Teamsters v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983)
3 (refusing to consider arguments regarding vacatur of arbitration award that were made more than
4 three months after arbitration award was issued).¹ Moreover, Petitioner makes no showing as to
5 why the authorities discussed above should not be applied to this case. (See ECF No. 12 at ¶¶ 5,
6 7.) Indeed, Petitioner cites no authority to counter Respondent’s argument that his petition is
7 untimely.

8 Therefore, Respondent’s motion to dismiss (ECF No. 7) is granted and this action is
9 **DISMISSED WITH PREJUDICE.**

10 **IT IS SO ORDERED.**

11 Dated: September 4, 2013

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Troy L. Nunley
United States District Judge

¹ Even if Petitioner’s petition to vacate the arbitration award was timely, the Court doubts this would be the appropriate venue to resolve this dispute. Respondent filed an action to confirm the arbitration award in the United States District Court for the Southern District of Florida, No. 13-mc-60892-WJZ, prior to this action. See *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 96 (9th Cir. 1982) (discussing first-filed rule).