

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553
(925) 646-2950

CLERK'S CERTIFICATE OF MAILING

CASE TITLE: CITY OF PIEDMONT VS ROBERT GRAY & ASSOC ET AL
CASE NUMBER: MSC11-00762 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

MATTHEW S. CONANT
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ROBERT J GUNDERT
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DAVID W LIVELY
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SAN JOSE CA 95113

I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at Martinez, California addressed as above indicated.

TITLE OF DOCUMENT SERVED: ORDER AFTER HEARING

DATE MAILED: 10/²⁴~~21~~/11

CLERK OF THE COURT

BY _____
C. FORFANG, Deputy Clerk

Notice 'CCM1' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVMSC11-00762 on 10/21/11:

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12. TIME: 9:00 CASE#: MSC11-00762
CASE NAME: CITY OF PIEDMONT VS ROBERT GRA
HEARING ON MOTION TO COMPEL ARBITRATION AND STAY LITIGATION
FILED BY HARRIS & ASSOCIATES, INC.

*** TENTATIVE RULING: ***

This motion to compel arbitration is brought by defendant Harris & Associates, Inc. ("Harris"). The motion is denied, for the reasons set forth below. Defendant Harris shall file a responsive pleading on or before October 19, 2011.

Evidentiary Objections

The Court rules as follows on the objections to evidence filed by defendant Harris on September 27, 2011. The Court requests that Harris number its objections in future law and motion proceedings.

Declaration of Geoffrey L. Grote: the objections are all sustained, on the ground that Mr. Grote does not allege how long he has been the City Administrator for plaintiff City of Piedmont ("City"), and thus has not established personal knowledge of the facts he alleges.

Declaration of Robert J. Gundert: the objections are all sustained, on the ground that this declaration improperly presents legal argument in the form of a declaration, and also on the ground that Mr. Gundert has not established personal knowledge of the facts he alleges. The Court notes that portions of defendant Harris's own opening declaration of David W. Lively, and portions of defendant Harris's reply declaration of Russell A. Moore, would appear to present evidentiary problems similar to those that are the subject of Harris's objections to Mr. Gundert's declaration; however, plaintiff City has not filed any evidentiary objections.

Declaration of Maria M. Lampasona: both objections are sustained, on the ground that Ms. Lampasona has not properly authenticated the subject document.

The Merits

Defendant Robert Gray & Associates ("RGA") is not a party to the 2007 on-call agreement between plaintiff City and defendant Harris. Also, the Court finds that plaintiff's claims against Harris and plaintiff's claims against RGA arise out of a series of related transactions that plaintiff entered into in order to complete the subject engineering project. Accordingly, if some of plaintiff's claims were decided in arbitration and others were decided in this action, there would be a substantial risk of conflicting rulings on common questions of law and fact.

In this situation, section 1281.2 of the Code of Civil Procedure gives the Court several procedural options. Having carefully evaluated these options, the Court exercises its discretion to deny the arbitration of any claims. Requiring arbitration of the claims against defendant Harris under the 2007 on-call agreement would not promote judicial economy, and would not appear to be of substantial benefit to the parties. Regardless of its outcome, such an arbitration would not likely resolve plaintiff City's remaining claims against Harris under the 2005 engineering services agreement, nor could it resolve any of plaintiff's claims against defendant RGA.

On this point of judicial economy, defendant Harris invites the Court to make a conclusive finding that plaintiff City has no factually supportable claims under the 2005 engineering services agreement, and thus that all of plaintiff's claims must be deemed to arise under the 2007 on-call agreement. The Court cannot make such a factual finding in the context of a motion to compel arbitration. Such a factual finding as to the merits of plaintiff's claims would be appropriate, if at all, only in the context of some other kind of motion, such as a motion for summary adjudication or a motion for nonsuit. In deciding this motion to compel arbitration, the Court must take plaintiff's claims against Harris at face value, and plaintiff has alleged violations of both the 2005 agreement and the 2007 agreement.

Defendant Harris also argues that plaintiff City's claims against Harris are easily severable from those against defendant RGA, and involve no common questions of law or fact. This argument lacks merit. RGA took over a project on which Harris had worked for several years, and Harris continued to have at least a modest role in that project. (See, e.g., Colicchia Dec., filed on August 12, 2011, paragraphs 8-13 and Exhibit "D"; Moore Dec., filed on September 27, 2011, corrected Exhibit "C.")