SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: May 9, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV370033	William J. Healy v. Stephen F. Wyrick	Order of examination: parties to appear.
LINE 2	23CV422859	Jane BQ Doe v. DoorDash, Inc.	Demurrer to complaint: with the filing of a first amended complaint, this demurrer is now MOOT.
LINE 3	23CV422859	Jane BQ Doe v. DoorDash, Inc.	Motion to strike portions of the complaint: with the filing of a first amended complaint, this motion is now MOOT.
LINE 4	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 5	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 6	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 7	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 8	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 9	22CV408565	City of San Jose v. Hitesh Investments, LLC	Click on LINE 4 or scroll down for ruling in lines 4-9.
LINE 10	23CV413954	Jabil Inc. v. Human Bees, Inc.	Click on LINE 10 or scroll down for ruling in lines 10-12.
LINE 11	23CV413954	Jabil Inc. v. Human Bees, Inc.	Click on LINE 10 or scroll down for ruling in lines 10-12.
LINE 12	23CV413954	Jabil Inc. v. Human Bees, Inc.	Click on LINE 10 or scroll down for ruling in lines 10-12.

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LINE #	CASE #	CASE TITLE	RULING
LINE 13	22CV404523	Tony Huang v. Kiso Capital Management I, LLC et al.	Click on LINE 13 or scroll down for ruling.

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Calendar Lines 4-9
Case Name: *City of San Jose v. Hitesh Investments, LLC*
Case No.: 22CV408565

Plaintiff City of San José (the "City") has filed three motions to compel against defendant Hitesh Investments, LLC (d/b/a Comfort Suites San Jose Airport) ("Hitesh") and three motions to compel against defendant Golden State Hospitality, LLC ("Golden State"). The motions against each defendant are essentially the same: (1) a motion to compel further responses to requests for production of documents, (2) a motion to compel further responses to interrogatories, and (3) a motion to compel further responses to requests for admissions. In addition, the City moves for monetary sanctions against defendants and their former attorney, Ana Vásquez, who withdrew from representation on November 21, 2023.

Because Hitesh and Golden State are companies who are no longer represented by Vásquez or any other counsel, they are unable to appear, and they have not responded to any of the motions. Nevertheless, Vásquez has filed a declaration opposing the imposition of monetary sanctions on her and her law firm. In addition, Vásquez has requested monetary sanctions against the City and its attorney, James Huang, for having had to respond to the request for discovery sanctions. In reply, the City has now backed down from its initial, aggressive request and states that it "is agreeable to withdrawing sanctions as to Ms. V[á]squez, and to suspend sanctions as to Defendants upon receipt of code-compliant, verified responses within thirty days." (Reply, p. 3:5-7.)

The court has reviewed the discovery requests set forth in the City's separate statements in support of the motions (one as to each defendant) and finds that they seek discoverable information and are generally appropriate in scope. They may be a bit overbroad, to the extent that they seek information starting from January 1, 2016, even though the allegations in this case relate to unpaid taxes from 2018 to 2022. At the same time, the court has been given no reason to doubt the City's contention that it is entitled to some leeway in the relevant timeframe—especially in its interrogatories—given the ongoing investigation. (See Memoranda in Support of Motion to Compel Further Responses to Interrogatories, p. 9:2-19.) (As for the requests for admissions, the City indicates that it will "limit the timeframe of the requests from January 1, 2018." (Memoranda, p. 6:2-4.)) Accordingly, the court GRANTS the motions to compel and orders Hitesh and Golden State to serve substantive responses to all of these discovery requests—as narrowed—within 30 days of notice of entry of this order.

As for the requests for monetary sanctions, the court GRANTS the City's requests for monetary sanctions against each defendant in the amount of $2,825 ($2,575 in attorney's fees plus $250 in statutory sanctions). Hitesh and Golden State must each pay this amount to the City within 30 days of notice of entry of this order.[1] The court DENIES the City's request for sanctions against Vásquez and her law firm. Even without the concession in the City's reply brief, the court would have denied the request as to defendants' former counsel in any event, as the court does not discern any basis for finding that Vásquez could have done anything differently here. Finally, the court DENIES Vásquez's request for monetary sanctions against the City.

[1] Again, the City states that it is willing to "suspend" sanctions in exchange for the production of documents, but the court does not get involved in such matters. If defendants produce documents as requested by the City, the City is free to decline any payment of these amounts.

IT IS SO ORDERED.

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Calendar Lines 10-12
Case Name: *Jabil Inc. v. Human Bees, Inc.*
Case No.: 23CV413954

This is a commercial dispute between plaintiff Jabil Inc. ("Jabil") and defendant Human Bees, Inc. ("Human Bees") regarding the provision of temporary workers by Human Bees. Currently before the court are three discovery motions filed by Jabil against Human Bees: (1) a motion to compel responses to requests for production of documents, and to compel the production of those documents; (2) a motion to compel responses to special interrogatories; and (3) a motion to deem the truth of matters and the genuineness of documents specified in requests for admissions. In addition, Jabil has requested monetary sanctions in the amount of $30,825. Human Bees opposes the motions and requests $10,000 in sanctions against Jabil. For the reasons that follow, the court GRANTS in part and DENIES in part the motion regarding documents; the court DENIES the motions regarding the interrogatories and requests for admissions. The court DENIES both sides' requests for monetary sanctions.

1. Requests for Production of Documents

Even though Jabil's motion is styled as a motion to compel "responses" to requests for production, it is actually a motion to compel "further responses," as Human Bees did serve substantive responses several days after they were due. (Compare Code Civ. Proc., § 2031.**300** with Code Civ. Proc., § 2031.**310**.) In addition, even though Jabil presents arguments in favor of further responses—*e.g.*, arguing that Human Bees has waived all objections to the requests because of its tardy responses—what it really appears to be seeking is *compliance* with the document requests, as it does not appear that Human Bees has indicated any intention to withhold documents on the basis of its objections. Thus, the essence of this motion is a motion to compel compliance. (Compare Code Civ. Proc., § 2031.**310** with Code Civ. Proc., § 2031.**320**.)[2] Indeed, Human Bees indicates that it has agreed to produce the confidential Form I-9 records that were the subject of the informal discovery conference on March 8, 2024. (Opposition at p. 3:1-11.)

The real dispute is over the pace of the production. As Jabil notes, and Human Bees acknowledges, there have been material delays in the document production. Jabil complains that Human Bees has produced only a small percentage of documents that it claims to have collected ("approximately 50,000"), and that Human Bees has dragged its feet on signing a stipulated protective order and agreeing to proposed search terms for documents.

It is ordinarily not a good idea for the parties to involve the court in a dispute over the timing of discovery compliance, particularly in a document-intensive commercial dispute. The parties are much closer to the practical and logistical issues raised by the production of significant amounts of documents than the court. Nevertheless, because the parties have been unable to work it out amongst themselves, the court will now impose presumptive deadlines for Human Bees' document production, as follows:

- The parties will meet and confer to finalize a stipulated protective order within the next 15 days.

[2] Jabil's notice of motion fails to cite the correct code sections. Instead, it simply refers to section "2031.300 *et seq.*," which is not useful.

- The parties will also meet and confer regarding search terms within the next 15 days.

- Human Bees will complete production of all of the Form I-9 documents that it has already agreed to produce within the next 45 days.

- Human Bees will run the parties' agreed-upon search terms on not just its emails, but also on other relevant document repositories, and it will substantially complete its document production (including complying with any reasonable requests for native files) by no later than July 31, 2024.

In short, the court grants in part and denies in part the motion to compel responses, further responses, and compliance. To the extent that these timeframes do not work for the parties, the court invites argument at the hearing.

The court denies Jabil's request for monetary sanctions.

2. Special Interrogatories

Jabil has filed a motion to compel "responses" to special interrogatories, but once again, this is incorrect, as Human Bees did serve tardy but substantive answers to the interrogatories, 13 days after the deadline. This should have been filed as a motion to compel "further responses." (Compare Code Civ. Proc., § 2030.**290** with Code Civ. Proc., § 2030.**300**.) Human Bees argues that this misnaming of the motion by Jabil was intentional, as Jabil missed the 45-day deadline to bring a motion under section 2030.300 by some months. The court agrees that this motion is untimely under section 2030.300, subdivision (c). In addition, the court agrees with Human Bees that *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404 does not support Jabil's position. In that case, the plaintiff filed its motion to compel responses (under section 2030.290) before the defendant had provided any responses to the discovery, and even after the defendant did respond, it did not provide any substantive answers to the form interrogatories. Here, by contrast, Human Bees provided substantive, albeit tardy, answers to the interrogatories *before* Jabil filed this motion. At the time of Jabil's filing of this motion, the question of compelling "responses," as opposed to "further responses," was already moot.

As a consequence, the motion to compel is denied. Although the court generally agrees with Jabil that Human Bees' response to Interrogatory No. 6 was too general and Human Bees' response to Interrogatory No. 11 was insufficient, Jabil has waived the right to compel a further response to these interrogatories. (See Code Civ. Proc., § 2030.300, subd. (c).)

Although Human Bees has requested monetary sanctions in the amount of $5,000 for having had to oppose this motion, this round number lacks any factual support in the opposition papers. In addition, although the court concludes that Jabil's motion is statutorily barred, the court also observes that Human Bees' responses were unjustifiably late and substantively deficient. The court denies both sides' requests for monetary sanctions.

3. Requests for Admissions

Finally, Jabil's third motion is also misnamed: it is presented as a motion to "deem the truth of matters and the genuineness of documents specified in requests for admissions," even though such a motion may be granted under Code of Civil Procedure section 2033.280 only if

the responding party has failed to serve responses *by the date of the hearing*. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776-778.) Here, Human Bees provided tardy but substantive responses three days after they were due. By the time Jabil filed this motion, it should have known that its request under section 2033.280 was already moot. Jabil argues that because the responses that it received were both tardy and unsatisfactory, there was no "substantial compliance" with the Discovery Act. The court completely disagrees. Even if the answers were not fully to Jabil's satisfaction (and the court does agree with Jabil that the responses to RFA Nos. 2 and 4 were somewhat verbose and evasive), they were still substantive responses, taking them outside the scope of section 2033.**280** and putting them in the realm of section 2033.**290**.

Jabil could have brought a motion to compel further responses last year, and if it had done so, the court probably would have granted it. But once again, Jabil missed the 45-day deadline for bringing a motion under section 2033.290, subdivision (c), and so it has waived the right to compel a further response.

The motion is denied, and the parties' respective requests for monetary sanctions are (once again) denied, for similar reasons as those already stated above.

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Calendar Line 13
Case Name: *Tony Huang v. Kiso Capital Management I, LLC et al.*
Case No.: 22CV404523

This is a petition to confirm an arbitration award, filed by defendants Kiso Capital Management I, LLC, Kiso Capital, LP, Kiso Advisors, LLC (collectively, "Kiso"), Damon Chong Doe, and Alfonzo Ted Bojorquez on March 13, 2024. Plaintiff Tony Huang opposes the petition. In addition, in his multiple opposition briefs—a "response" dated March 4, 2024, a "combined response" dated March 25, 2024, and an unauthorized surreply (labeled a "reply") dated May 2, 2024—Huang requests that the award be vacated, even though he has not filed a separate petition or notice of motion to vacate the award.[3] Accordingly, the only petition properly before the court is one to confirm the award. But because the parties have combined all of their arguments in favor of confirming or vacating the award into five different briefs for this hearing—and because these arguments are all interrelated—the court considers the arguments together.

The court GRANTS the petition to confirm the arbitration award and DENIES the request to vacate the award.

Huang raises four arguments in opposition to defendants' petition and in support of his request to vacate, all of which the court finds to be meritless.

1. Alleged Failure to Disclose Prior Case

Huang's principal contention is that the retired judge who served as the arbitrator, Wynne S. Carvill, failed to make a mandatory disclosure under Code of Civil Procedure section 1281.9, under Standard 7 of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, and under the applicable JAMS rules. According to Huang, counsel for defendants, Peter Bertrand, indicated on a conference call with Huang's counsel that he "had a matter just a year prior (to the initiation of the arbitration proceeding) with Hon. Wynne S. Carvill." (Declaration of Emil Chang, ¶ 2; Declaration of Nathan Long, ¶ 2.) According to Huang's counsel, "At a hearing on a motion regarding discovery . . . it appeared to me Mr. Bertrand and the Arbitrator were referencing a matter that they had had previously, the context of which was not clear to me and it was not possible for me to follow it or respond to it." This alleged matter was not disclosed to Huang by Judge Carvill, and Huang now contends that this was a violation of the mandatory disclosure rules, necessitating that the arbitration award be vacated.

There are multiple problems with this argument.

First, Bertrand emphatically denies ever saying to Huang's counsel that he had a matter with Judge Carvill "in the year prior" to the arbitration, and he denies that there was such a matter at all. According to Bertrand, this claim is "categorically false." (March 14, 2024 Declaration of Peter Bertrand, pp. 1:27-2:4; see also March 19, 2024 Declaration of Peter Bertrand at ¶ 3.) Instead, Bertrand states that the "only matter that I ever had before Judge

[3] Huang's first "response" predates defendants' petition, as it appears that defendants served Huang with the petition in February 2024 but did not correctly file it with the court until March 13, 2024. Huang's second "response" is not identical to the first one but raises substantially the same arguments.

Carvill was in 2012," where he appeared in front of Carvill when Carvill was *a judge*, not a *paid neutral*. (March 19, 2024 Declaration of Peter Bertrand at ¶ 3.) Under section 1281.9 of the Code of Civil Procedure, Standard 7 of the Ethics Standards for Neutral Arbitrators, and the JAMS rules, mandatory disclosures are required of arbitrators for cases in which they acted as a *paid neutral within the past five years*, not for cases in which they were *public judges more than 10 years ago*. Therefore, none of these rules required disclosure of the 2012 jury trial.

Second, Huang's counsel's declarations fail to state when this alleged conference call took place between the parties, and it fails to set forth any other details that would lend their declarations any indicia of reliability or credibility. (Chang Declaration, ¶ 2; Long Declaration, ¶ 2.) There is no description of how this disclosure came up, what the purported case within the last year was about, or whether Chang or Long had any follow-up questions for Bertrand when he made this purported disclosure. Indeed, it defies belief that Bertrand would have revealed this surprising information about an arbitration "just a year prior" without both Chang and Long asking for more details about it. Instead, according to Chang and Long's own declarations, they simply sat on their hands.

As a result, Huang's briefs rely solely on conjecture, speculation, and wishful thinking when he argues that the arbitrator's acknowledgment of a prior case with Bertrand (which Huang calls the "Admitted Case") was an arbitration within the past year, rather than the jury trial from 2012. There is simply no credible evidence of a failure to disclose by Judge Carvill, other than Chang and Long's vague recollection of an alleged conference call with Bertrand. In considering the battle of credibility between Chang/Long and Bertrand/Carvill on this point, the court has no basis for finding the former are more credible than the latter, and so the court simply cannot find that Huang has satisfied his burden of showing that Judge Carvill violated the disclosure rules.[4]

Third, even if there was an arbitration within the last year between Bertrand and Judge Carvill that the latter failed to disclose, that is still not a sufficient basis to vacate the arbitration award, given Huang's failure to seek disqualification following the alleged, undated conference call with Bertrand. By failing to seek disqualification once he learned about this supposedly recent case and instead proceeding with the arbitration hearing all the way to its conclusion, Huang forfeited any challenge to the award on the basis of the alleged non-disclosure. (See *Cox v. Bonni* (2018) 30 Cal.App.5th 287, 306-307; see also *United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 29 Cal.App.4th 63, 85 [a party that becomes aware of an incomplete disclosure cannot passively reserve the issue for consideration after the arbitration has ended]; *Honeycutt v. JPMorgan Chase Bank, N.A.* (2018) 25 Cal.App.5th 909, 926 [same].)

For all of these reasons, the court rejects Huang's claim that a purported failure to disclose a ground for disqualification under Code of Civil Procedure section 1281.9 and Standard 7 of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration necessitates that the arbitration award be vacated under Code of Civil Procedure section 1286.2.

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[4] Similarly, Huang has failed to justify his alternative request for more discovery regarding the "Admitted Case," as it, too, is based on sheer speculation.

2. Authority to Decide Judicial Dissolution Claims

Huang also argues that Judge Carvill exceeded his powers as an arbitrator when he suggested in his initial, partial award that Huang's three judicial dissolution claims "may be beyond the authority of the arbitrator given the [scope of the Limited Partnership Agreement]" but then proceeded to adjudicate these claims in his final award. It appears that Judge Carvill reconsidered the scope of his authority between the time of issuance of the partial award and the time of issuance of the final award, based on further input from the parties, and concluded that he could in fact decide the judicial dissolution claims. The court discerns no basis for second-guessing this conclusion, as it was completely within the arbitrator's power to do so. As defendants point out, the parties had already agreed that the scope of the arbitrator's jurisdiction was something that could be decided by the arbitrator, rather than the court. Moreover, even though Huang later indicated that he "did not pursue other causes of action such as judicial dissolution in the arbitration," he originally included these causes of action as part of his counterclaims. (See Declaration of Nathan Long in Support of Motion to Submit Amended Response.) In Case Management Order No. 6, the arbitrator expressly indicated that these counterclaims would be subject to arbitration. Thus, the fact that Huang chose not to brief the dissolution counterclaims in his final arguments is of no moment. It was completely within Judge Carvill's discretion to determine that, based on his findings of fact and conclusions of law on all of the *other* issues in the case, the judicial dissolution claims should be dismissed with prejudice.

Indeed, even though Huang complains now that he was deprived of the opportunity to litigate or arbitrate the issue more fully, that complaint is not a basis for vacating the arbitration. Huang does not even attempt to show that there was additional evidence or argument that he could have submitted that would have had any impact on the outcome. Under Code of Civil Procedure section 1286.2, this court does not review alleged evidentiary or procedural errors in an arbitration—it only determines whether there is a statutory basis to vacate an arbitration award. This argument qualifies only as the former (at best) and not the latter.

The court also disagrees with Huang's characterization of the court's own April 27, 2023 order staying this case pending the arbitration. Contrary to Huang's strained interpretation of the order, the court did not stay this case in order to maintain "exclusive jurisdiction" over his counterclaims in the superior court; instead, the court stayed this case precisely because of the significant overlap between his positions as a plaintiff in this court case and his positions as a respondent and counterclaimant in the arbitration. The court made it clear in its order that the purpose of the stay was "*to protect the jurisdiction of the arbitrator*," not to protect the jurisdiction of the court. (April 27, 2023 Order at p. 4:14-16.) Accordingly, the court's order does not support Huang's claim that the arbitrator lacked jurisdiction to decide the judicial dissolution issues. On the contrary, the court's order supports the exercise of the arbitrator's authority to decide all overlapping issues that fell within the scope of the arbitration agreement.

3. Application of California Law vs. Delaware Law

Huang argues that the arbitrator applied the wrong standard of causation, relying on California law instead of Delaware law. Again, this is not a basis for vacating the arbitration award under section 1286.2, as it is merely an alleged legal error, and the purpose of a motion

to vacate is not to address legal errors by the arbitrator. Moreover, defendants point out that Huang failed to cite any Delaware law throughout the entire arbitration and "totally relied on California law in support of [his] claims." (March 18, 2024 Combined Response at pp. 13:19-14:7.) As such, he completely forfeited this argument by failing to raise it with the arbitrator and by actually inviting the purported legal error.

4. Proper Parties to the Arbitration

Finally, Huang argues that the only signatories to the Kiso Limited Partnership Agreement were Huang and Kiso Management I, LLC, and so the arbitrator "illegally arbitrated the disputes among Huang, Kiso Fund, Kiso Advisors, Doe, and/or Bojorquez." (March 4, 2024 Response at pp. 11:19-13:18.) Once again, this is not an enumerated basis for vacating an arbitration award under section 1286.2. Moreover, just because certain parties such as Kiso Advisors LLC, Doe, or Bojorquez were not signatories to an arbitration agreement does not mean that they could not be willing parties to a JAMS arbitration involving those signatories. Indeed, it appears that all of these parties voluntarily participated in the arbitration, Huang's pretrial brief expressly asserted counterclaims against Doe and Bojorquez, and no party—including Huang—objected at any time to the participation of Doe, Kiso Capital, LP, or Kiso Advisors, LLC as named claimants and cross-respondents in the case. As a result, Huang's contention that the arbitration "illegally" included these parties is baseless, and it is yet another contention that was forfeited, in any event, because of Huang's failure to raise it during the course of the arbitration.

The court hereby confirms the arbitration award. Defendants shall submit a separate judgment for the court's signature that conforms to the arbitration award.

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