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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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MOHIT RANDHAWA aka HARPAL SINGH; SHANNON CALLNET PVT LTD,

NO. CIV. 2:09-2304 WBS KJN

Plaintiffs,

ORDER RE: STATUS CONFERENCE AND MOTION TO VACATE STAY AND TO DISMISS

v.

SKYLUX INC., INTERACTIVE INTELLIGENCE, INC., MUJEEB PUZHAKKARAILLATH, SKYLUX TELELINK PVT LTD; and DOES 1 through 20, inclusive,

Defendants.

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Plaintiffs Mohit Randhawa aka Harpal Singh and Shannon Callnet Pvt. Ltd. ("Shannon Callnet") filed this action against defendants Interactive Intelligence, Inc. ("Interactive"), Skylux, Inc., Mujeeb Puzhakarailath, and Skylux Telelink Pvt. Ltd. (the latter three collectively "Skylux defendants"), alleging state law claims arising from contracts for an India-based calling center and software. On October 18, 2010, the

1 court stayed all claims against Interactive, which are subject to  
2 arbitration, and all claims against the Skylux defendants, which  
3 are not subject to arbitration. (Docket No. 102.) On March 28,  
4 2011, the court held a Status Conference for Shannon Callnet and  
5 Interactive to inform the court of the status of arbitration  
6 between them and to suggest a schedule for further proceedings in  
7 this court. The court also heard Interactive's motion to vacate  
8 the stay and to dismiss the claims against it. (Docket No. 103.)

9           On February 28, 2011, Interactive filed its motion to  
10 vacate the stay and to dismiss the claims against it, which is  
11 based in part on Shannon Callnet's failure to commence  
12 arbitration. (Notice of Mot. by Interactive to Vacate Stay &  
13 Dismiss All Claims Against It in FAC; Mem. of P. & A. in Supp.  
14 Thereof at 8:24-9:2 (Docket No. 103).) However, the Joint Status  
15 Report (Docket No. 108), filed on March 14, 2011, informs the  
16 court that Shannon Callnet commenced arbitration in Chicago,  
17 Illinois, that day. (Id. at 2:7-8.) Shannon Callnet requests  
18 that the court continue to stay the entire litigation pending  
19 resolution of the arbitration with Interactive. (Id. at 2:13-  
20 14.)

21           In the Joint Status Report, Interactive acknowledges  
22 that arbitration has begun, but argues that the court should  
23 still grant its motion to vacate the stay and to dismiss the  
24 claims against it:

25           [I]nteractive maintains that this event makes dismissal  
26 of the claims against Interactive without prejudice even  
27 more appropriate. The Federal Arbitration Act provides  
28 that judgment on the arbitration award and any action to  
modify or correct the award must be made by "the United  
States court in and for the district within which such  
award was made." FAA §§ 9 and 11. Thus, any issues

1 relating to the arbitration must be determined by the  
2 Northern District of Illinois, and not this Court.

3 (Id. at 2:23-28.)

4 However, in Cortez Byrd Chips, Inc. v. Bill Harbert  
5 Construction Co., 529 U.S. 193, 204 (2000), the Supreme Court  
6 held that the venue statutes in sections 9 through 11 of the  
7 Federal Arbitration Act, 9 U.S.C. §§ 9-11 (governing confirming,  
8 vacating, and modifying arbitration awards), are permissive, not  
9 mandatory. Moreover, the Supreme Court had "previously held that  
10 the court with the power to stay the action under § 3 has the  
11 further power to confirm any ensuing arbitration award." Cortez  
12 Byrd Chips, 529 U.S. at 202 (citing Marine Transit Corp. v.  
13 Dreyfus, 284 U.S. 263, 275-276 (1932)). In its reply,  
14 Interactive corrects its misstatement of law in the Joint Status  
15 Report and acknowledges that the venue statutes are not  
16 mandatory. (Reply Mem. Supp. Interactive's Mot. to Dismiss at  
17 6:14-18, 6 n.4 (Docket No. 110).)

18 In the Joint Status Report and in its motion,  
19 Interactive essentially renews its request from its original  
20 motion to dismiss and opposition to Shannon Callnet's motion to  
21 stay in October of 2010 (Docket Nos. 91, 93) that instead of  
22 staying the claims against it pursuant to 9 U.S.C. § 3 (requiring  
23 stay upon application of a party not in default in proceeding  
24 with arbitration) the court dismiss the claims against  
25 Interactive in light of the Ninth Circuit's interpretation of §  
26 3. See Sparling v. Hoffman Const. Co., 864 F.2d 635, 638 (9th  
27 Cir. 1988) (explaining that district courts may order dismissal  
28 "when all claims are barred by an arbitration clause"). But see

1 Precision Press, Inc. v. MLP U.S.A., Inc., 620 F. Supp. 2d 981,  
2 995 (N.D. Iowa 2009) (discussing split among circuits).

3           Section 3's plain language requires a stay upon  
4 application of a non-defaulting party. The Ninth Circuit  
5 permits, but does not require, dismissal when all claims are  
6 barred by the arbitration clause. See, e.g., Am. Forest  
7 Holdings, LLC v. Bank of Am., NA, No. CV-10-3044, 2011 WL 320911,  
8 at \*2 (E.D. Wash. Jan. 28, 2011) (staying, not dismissing,  
9 claims); Taleb v. AutoNation USA Corp., No. CV06-02013, 2006 WL  
10 3716922, at \*7 (D. Ariz. Nov. 13, 2006) (same). In light of the  
11 plain language of § 3, the parties' seeming unwillingness to  
12 arbitrate until recently, and the fact that the claims against  
13 the Skylux defendants are not arbitrable, the court will maintain  
14 the stay of the claims against Interactive, which are subject to  
15 arbitration, and retain jurisdiction.

16           IT IS THEREFORE ORDERED that:

17           (1) Interactive's motion to vacate the stay and to  
18 dismiss the claims against it be, and the same hereby is, DENIED;

19           (2) Upon completion of or default in proceeding with  
20 the arbitration, Shannon Callnet and Interactive will inform the  
21 court and file appropriate documents for the completion or  
22 continuation of this action;

23           (3) This case is set for a Status Conference at 2:00  
24 p.m. on June 27, 2011, in Courtroom No. 5. No later than two  
25 weeks before the conference, the parties shall file a joint

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1 status report setting forth the status of the arbitration and  
2 suggesting a schedule for further proceedings in this court.

3 DATED: March 25, 2011

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5 WILLIAM B. SHUBB

6 UNITED STATES DISTRICT JUDGE

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