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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISRAEL DISCOUNT BANK OF
NEW YORK,

Plaintiff,

No. C 10-5047 PJH

v.

**ORDER STAYING CASE AND
GRANTING MOTION TO COMPEL
MEDIATION**

SIMIS INC., et al.,

Defendants.

Before the court is defendants' motion to stay proceedings and compel mediation, based on a provision in the August 26, 2010 Amended and Restated Loan Agreement ("Amended Loan Agreement") between defendant SIMIS, Inc. ("SIMIS") and plaintiff Israel Discount Bank of New York ("IDB").

The provision at issue states as follows:

If a dispute shall arise between the parties regarding the interpretation or enforcement of this Agreement, each agrees to first mediate the dispute with the assistance of a trained and experienced mediator to be selected by mutual agreement of the parties. If the parties cannot agree on a mediator, either party may apply to Judicate West in San Francisco, for the appointment of a mediator. The parties shall engage in at least eight (8) hours of good faith mediation pursuant to the then applicable rules of Judicate West. In the event that the dispute cannot be resolved by mediation, each party shall be free to initiate whatever litigation such party deems appropriate in the Superior Court of California for the County of San Francisco or the United States District Court for the Northern District of California located in San Francisco, California. The fees and costs of the mediator shall be borne equally by the parties unless they agree otherwise as part of the mediation process.

Amended Loan Agreement ¶ 10.13.

United States District Court
For the Northern District of California

1 IDB asserts that the motion to compel mediation should be denied because there is
2 no genuine dispute between IDB and the defendants regarding the “interpretation or
3 enforcement” of the Amended Loan Agreement. The court finds, however, that the
4 mediation provision is broad enough to encompass the present dispute between the
5 parties.

6 Given that IDB has already initiated the litigation, and that certain relief has been
7 granted, the court finds further that the appropriate action would be to stay the case for 60
8 days as requested by defendants, and order the parties to proceed to mediation in
9 accordance with their agreement.

10 While the preliminary injunction remains in effect, any further litigation is hereby
11 STAYED until February 28, 2010. Defendants’ motion to compel mediation is GRANTED,
12 in accordance with the provisions of the Amended Loan Agreement. The date for the case
13 management conference, previously set for February 16, 2010, is VACATED. The court
14 will conduct a case management conference on Thursday, March 10, 2010, at 2:00 p.m.

15
16 **IT IS SO ORDERED.**
17 Dated: December 27, 2010



PHYLLIS J. HAMILTON
United States District Judge