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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUSSELL CITY ENERGY COMPANY, LLC,

No. C 14-03102 JSW

Plaintiff,

v.

**ORDER REQUESTING
SUPPLEMENTAL BRIEFING
AND CONTINUING HEARING
DATE**

CITY OF HAYWARD,

Defendant.

_____ /

This matter comes before the Court upon consideration of the motion to dismiss filed by the City of Hayward (“Hayward”). The Court is no longer available for a hearing on October 10, 2014. Accordingly, the Court CONTINUES the hearing to October 31, 2014 at 9:00 a.m. However, if it determines that the motion is suitable for disposition without oral argument, it shall notify the parties in advance of the hearing. If the parties are unavailable on October 31, 2014, the parties may submit a request to continue the hearing to an open and available date in December. Alternatively, the Court would consider a request to move the hearing to October 17, 2014.

The Court FURTHER ORDERS supplemental briefing from Plaintiff as set forth in this Order. One of the issues raised by Defendant’s motion to dismiss is the interpretation of the following contract provision (the “Payment Clause”):

[T]he Parties acknowledge that payments to be made by [RCEC] as contemplated in this Agreement comprise all payments to be made to the City by [RCEC] . . . in connection with the development, construction, ownership and operation of [the Energy Center] and the City shall not impose any other levies, fees, taxes, contributions, or charges on [RCEC] . . . other than such levies, fees, taxes, contributions, or charges generally applicable to similarly situated owners of real property located in the City.


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Plaintiff argues that the Court cannot dismiss this case on a motion to dismiss, because the parties have competing interpretations of the Payment Clause, each of which are reasonable. Plaintiff acknowledges the emphasized language, but its argument about the proper interpretation of the Payment Clause boils down to an assertion that it is not required to pay the tax at issue. Plaintiff has neither clearly argued why it believes the Payment Clause to be ambiguous nor clearly proffered its competing interpretation of the Payment Clause.

Accordingly, by no later than October 8, 2014, Plaintiff shall file a supplemental brief that is no longer than two (2) pages, that clearly sets forth its position on those two issues. There shall be no further response from Defendant, unless otherwise ordered by the Court.

IT IS SO ORDERED.

Dated: October 1, 2014



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE