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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO UNIFIED PORT
DISTRICT,

Plaintiff,

v.

NORTHWESTERN NATIONAL
INSURANCE COMPANY,

Defendant.

CASE NO. 10cv1039-H (MDD)

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S SECOND
MOTION FOR
ENFORCEMENT OF
SETTLEMENT AGREEMENT
AND AWARD OF
ATTORNEY'S FEES

[ECF NO. 53]

Before the Court is Plaintiff's Motion for Enforcement of Settlement Agreement and Award of Attorney's Fees filed on January 16, 2015. (ECF No. 53). Defendant responded in opposition on February 2, 2015. (ECF No. 55). Plaintiff replied on February 6, 2015. (ECF No. 56). A hearing was held on February 18, 2015. As provided below, Plaintiff's Motion to Enforce the Settlement Agreement is **GRANTED**. Plaintiff's request for sanctions, however, is **DENIED WITHOUT PREJUDICE**.

Plaintiff asserts that Defendant has failed timely to pay invoices as required by the settlement agreement. In a previously filed motion,

1 Plaintiff sought an order compelling Defendant to abide by the terms of
2 the settlement agreement. (ECF No. 46). Plaintiff did not seek specific
3 enforcement of particular invoices nor make a specific monetary demand.
4 (*Id.*). Defendant countered, at that time, that this Court lacked
5 jurisdiction, that the motion lacked sufficient evidentiary support and
6 that attorney's fees should not be awarded. (ECF No. 48). The Court
7 declined to issue the order requested by Plaintiff, declined to order an
8 award of attorney's fees and costs but ruled that it had jurisdiction to
9 hear motions to enforce the settlement agreement. (ECF No. 52).

10 The instant motion renews Plaintiff's claim that Defendant has
11 failed to make payments as required by the settlement agreement and
12 seeks an order requiring the payment of \$122,858.23 for delinquent
13 payments as of the time of the motion. Plaintiff again seeks sanctions in
14 form of attorney's fees. (ECF No. 53). Defendant renews its objection to
15 the jurisdiction of the Court, and disputes the amount owed and objects
16 to any award of sanctions. (ECF No. 55).

17 **Background**

18 The underlying action was filed in the Superior Court of California,
19 County of San Diego, and was removed by Defendant to this Court on
20 May 14, 2010. (ECF No. 1). In essence, Plaintiff claims that Defendant
21 failed to pay funds to Plaintiff based upon insurance contracts between
22 the parties. (*Id.*). On July 7, 2011, the parties filed a Joint Motion to
23 Dismiss with Prejudice and requesting that the Court retain jurisdiction
24 over the settlement.¹ (ECF No. 41). On October 7, 2011, District Judge
25 Marilyn L. Huff entered an Order granting the Joint Motion to Dismiss,
26 dismissing the case with prejudice and retaining jurisdiction to enforce

27
28 ¹ The settlement agreement also reflects the consent of the parties to
have this Court hear any motions to enforce the settlement agreement.
(ECF No. 46-1, Agreement ¶ 1.4).

1 the settlement agreement. (ECF No. 42).

2 As relevant to the instant dispute, the settlement agreement
3 provides that Defendant must pay ongoing defense fees and costs in
4 connection with certain identified lawsuits. (See ECF No. 46-1 Recitals
5 ¶ B, Agreement ¶ 1.3). In particular, Defendant agreed to pay defense
6 fees and costs in the identified lawsuits within sixty days of transmittal
7 of invoices. (*Id.* ¶ 1.3.3). Defendant was permitted an extra thirty days
8 to raise any issues regarding an invoice with Plaintiff but was required
9 to make payments no later than ninety days from the date the invoice
10 was transmitted. (*Id.*). The parties agreed and consented to the
11 continued jurisdiction of the Court to enforce the settlement agreement.
12 (*Id.* ¶ 1.4).

13 Analysis

14 1. Jurisdiction

15 Defendant asserts that this Court lacks jurisdiction to enforce the
16 settlement agreement. Defendant argues that despite the agreement of
17 the parties that the Court retain such jurisdiction and its incorporation
18 in the Order dismissing this case, the dismissal with prejudice precludes
19 the exercise of jurisdiction. Defendant relies upon *Shapo v. Engle*, 463
20 F.3d 641, 643 (7th Cir. 2006), for the proposition that a district court
21 cannot retain jurisdiction over a settlement agreement once the
22 underlying case is dismissed with prejudice. The court of appeals in
23 *Shapo* interpreted a Supreme Court case, *Kokkonen v. Guardian Life*
24 *Ins. Co.*, 511 U.S. 375 (1994), as requiring that result. In *Kokkonen*, the
25 Court ruled that a district court does not have inherent power to retain
26 jurisdiction over a settlement agreement in cases that are voluntarily
27 dismissed. *Id.* at 381-82. The Court stated, however, in language not
28 mentioned in the *Shapo* opinion that:

1 The situation would be quite different if the parties' obligation
2 to comply with the terms of the settlement agreement had been
3 made part of the order of dismissal—either by separate
4 provision (such as a provision “retaining jurisdiction” over the
5 settlement agreement) or by incorporating the terms of the
6 settlement agreement in the order. In that event, a breach of
7 the agreement would be a violation of the order, and ancillary
8 jurisdiction to enforce the agreement would therefore exist.

6 *Id.* at 381.

7 In this Circuit, unlike the Seventh, courts can retain ancillary
8 jurisdiction over settlement agreements in cases dismissed with
9 prejudice provided that the parties consent and the retention of
10 jurisdiction is in the Order of dismissal. *See K.C. v. Torlakson*, 762 F. 3d
11 963, 967 (9th Cir. 2014). Accordingly, as both prongs are met here, the
12 Court finds that it has jurisdiction to enforce the instant settlement
13 agreement.

14 2. Merits

15 Plaintiff asserts that it has submitted invoices to Defendant
16 resulting in a delinquency of \$122,858.23. Plaintiff submitted a
17 summary of those invoices as well as the declaration of counsel. (ECF
18 Nos. 53-1, 53-2). Plaintiff asserts that Defendant did not dispute any of
19 the invoices as required by ¶ 1.3.3 of the settlement agreement.
20

21 Defendant concedes that it did not dispute any of the invoices
22 pursuant to ¶ 1.3.3. (ECF No. 55). Instead, Defendant asserts that
23 failing to dispute the invoices cannot serve as a waiver of its right to
24 contest the invoices now. (*Id.*). Defendant’s position is untenable.

25 These are sophisticated parties with experienced and
26 knowledgeable counsel. The settlement agreement itself recites that the
27 agreement was the product of arm’s length negotiations and that the
28 language in all parts of the agreement “shall be construed as a whole

1 according to its meaning, and not strictly for or against any of the
2 Parties.” (ECF No. 46-1, ¶ 9.2).

3 The agreement provides that the Defendant has sixty days from
4 the date that an invoice is transmitted from Plaintiff to pay the invoice
5 or dispute it. If Defendant disputes all or part of an invoice, Defendant
6 has an additional thirty days to address the dispute with Plaintiff. In
7 any event, according to the agreement, Defendant must pay the invoice
8 in its entirety no later than ninety days following transmittal. (ECF No.
9 46-1 ¶ 1.3.3). The following subparagraph, ¶ 1.4, provides for continuing
10 jurisdiction in this Court over enforcement of the settlement agreement.

11 Defendant asserts that inasmuch as ¶ 1.3.3 does not provide
12 expressly for an avenue to resolve disputes over invoices, Defendant was
13 relieved from compliance and remains able to dispute invoices in the
14 Court. (ECF No. 56). To the contrary, the Court finds that Defendant is
15 bound by its agreement and must dispute invoices, and pay them in full,
16 prior to seeking relief in the Court under ¶ 1.4. Essentially, ¶ 1.3.3 acts
17 as a reservation of rights provision. It is instructive that the provision
18 regarding enforcement immediately follows ¶ 1.3.3 in ¶ 1.4. The Court
19 finds that two subparagraphs, considered together, provide for a dispute
20 procedure and recourse to the Court to resolve the dispute. The parties
21 could have agreed to an alternate procedure, such as having the
22 Defendant raise a dispute and withhold payment requiring Plaintiff to
23 bear the financial burden and seek redress. But, they did not. Instead,
24 the agreement places the financial burden and the burden to initiate
25 enforcement litigation on Defendant. There is nothing inherently unfair
26 in the procedure agreed to by the parties and the Court will enforce it.

27 Enforcing the provision means that the Defendant cannot now
28

1 raise objections to the invoices at issue in this motion. Allowing the
2 Defendant to raise objections now would render ¶ 1.3.3 a nullity and
3 defeat the clear intent of the parties. Having chosen to ignore its
4 obligations, Defendant must bear the consequences. Plaintiff's Motion
5 for Enforcement of the Settlement Agreement is **GRANTED**. Defendant
6 shall pay in full the delinquent invoices outstanding at the time of the
7 filing of the instant motion.

8 **3. Sanctions**

9 Plaintiff requests attorney's fees in the amount of \$10,972.50
10 reflecting 39.9 hours of attorney time, at \$275 per hour, in bringing this
11 motion. The request, however, lacks any supporting documents or
12 declarations. The request is **DENIED WITHOUT PREJUDICE**. If
13 Plaintiff intends to seek attorney's fees in connection with this motion, it
14 may file a properly supported motion with the Court within thirty days
15 of the date of this Order.

16 **Conclusion**

17 Plaintiff's Motion to Enforce the Settlement Agreement is
18 **GRANTED**. Defendant is **ORDERED** to pay the sum of \$122,858.23 to
19 Plaintiff within thirty days of the date of this Order, absent further
20 Order of the Court or agreement of the parties. Plaintiff's request for
21 sanctions is **DENIED WITHOUT PREJUDICE**. Should Plaintiff
22 decide to seek sanctions in the form of attorney's fees, such a motion
23 must be brought within thirty days of the date of this Order.

24 **IT IS SO ORDERED.**

25 **DATED:** February 19, 2015

26 
27 Hon. Mitchell D. Dembin
28 U.S. Magistrate Judge