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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DALE M. WALLIS, D.V.M., JAMES  
L. WALLIS, and HYGIEIA  
BIOLOGICAL LABORATORIES, INC.,  
a California Corporation,

NO. CIV. 08-2558 WBS GGH

Plaintiffs,

ORDER RE: MOTION TO ENFORCE  
SETTLEMENT AGREEMENT

v.

CENTENNIAL INSURANCE COMPANY,  
INC., a New York corporation,  
ATLANTIC MUTUAL INSURANCE CO.,  
INC., a New York Corporation,

Defendants.

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AND RELATED COUNTER-CLAIMS AND  
THIRD-PARTY COMPLAINT.

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Plaintiffs Dale M. Wallis ("Dr. Wallis"), James L.  
Wallis ("Mr. Wallis"), and Hygieia Biological Laboratories, Inc.  
("Hygieia") brought this action against defendants Centennial  
Insurance Company Inc. and Atlantic Mutual Insurance Co. Inc.  
(collectively referred to as "Centennial") alleging breach of

1 insurance contract, breach of the implied covenant of good faith  
2 and fair dealing, and breach of fiduciary duty relating to  
3 plaintiffs' veterinarian professional liability policy  
4 ("Policy").

5 All proceedings unrelated to the Cumis<sup>1</sup> fee dispute  
6 have been stayed since the court issued its December 9, 2009  
7 Order granting plaintiff's motion for a stay. (Docket No. 74.)  
8 On July 20, 2009, the parties signed an untitled, handprinted  
9 document which purported to set forth the terms of a settlement  
10 but contained the provision that "this release will be reduced to  
11 a formal release to be executed by all parties." The document  
12 went on to state, however, that "this agreement is binding upon  
13 all signators, whether or not the parties execute a formal  
14 agreement."

15 On January 20, 2010, the court denied a motion by  
16 plaintiffs to enforce the terms of the July 20, 2009 handwritten  
17 document, as the parties were working on submitting a final  
18 global release. (Docket No. 87.) Since the court issued its  
19 January 20, 2010 Order, the parties have tried and failed to  
20 negotiate a formal settlement and stipulation to dismiss the  
21 pleadings.

22 Centennial now moves the court for an order enforcing  
23 the handwritten document and dismissing this action in its  
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27 <sup>1</sup> San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y,  
28 Inc., 162 Cal. App. 3d 358 (1984). The court granted defendants'  
motion to compel binding arbitration with respect to attorneys'  
fees owed Cumis counsel on April 15, 2009. (Docket No. 41.)

1 entirety.<sup>2</sup> (Docket No. 93.)

2 "It is well settled that a district court has the  
3 equitable power to enforce summarily an agreement to settle a  
4 case pending before it." Callie v. Near, 829 F.2d 888, 890 (9th  
5 Cir. 1987). To be enforceable, a settlement must meet two  
6 requirements. First, it must be a completed agreement. Callie,  
7 829 F.2d at 890-91. Second, both parties must have either agreed  
8 to the terms of the settlement or authorized their respective  
9 counsel to settle the dispute. Harrop v. Western Airlines, Inc.,  
10 550 F.2d 1143, 1144-45 (9th Cir. 1977). The July 20, 2009  
11 document meets neither requirement.

12 First, the court cannot conclude with any degree of  
13 certainty that the handwritten July 20, 2009 document was  
14 intended to be a completed agreement. The parties clearly  
15 anticipated that it would be reduced to a more formal agreement  
16 at a later date. It could thus be interpreted as more of an  
17 agreement to agree, and the language to the effect that it is  
18 binding on all parties could be construed to mean that the  
19 agreement to agree was binding on all parties. Second, the  
20 parties now dispute what the terms of the agreement were to be.  
21 Specifically, they do not agree whether the release was intended  
22 to include those claims in this action that the court has sent to  
23 arbitration.

24 This court was neither a party to the so-called  
25 settlement agreement nor did this court approve it. The whole

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27 <sup>2</sup> Plaintiffs also request the court take judicial  
28 notice of various filings in the underlying state court action.  
(Docket No. 108.) The court will take judicial notice of such  
filings. See Fed. R. Evid. 201(b)(2).

1 concept of a settlement is that it is a voluntary agreement  
2 between the parties to resolve a lawsuit on mutually acceptable  
3 terms. That concept is defeated when the court imposes terms on  
4 one of the parties which that party did not intend to accept.  
5 Here, it appears that the parties never had a meeting of the  
6 minds. If they cannot agree on what their purported settlement  
7 covered then they do not have a settlement agreement.

8 IT IS THEREFORE ORDERED that Centennial's motion to  
9 enforce the settlement agreement be, and the same hereby is,  
10 DENIED.

11 DATED: June 24, 2010

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13 WILLIAM B. SHUBB  
14 UNITED STATES DISTRICT JUDGE  
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