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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.

\_\_\_\_\_ /

AND RELATED COUNTER-CLAIMS AND  
THIRD-PARTY COMPLAINT.

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Following this court's Order of April 16, 2009,  
granting defendants' motion to compel binding arbitration with

1 respect to the amount of attorney's fees allegedly owed to Cumis<sup>1</sup>  
2 counsel, the parties entered into a handwritten agreement  
3 purporting to settle the remaining claims in this action.  
4 Presently before the court is plaintiffs' motion to enforce the  
5 terms of that agreement.

#### 6 Dismissal of Claims

7 Plaintiffs first ask the court to enforce those  
8 provisions of the agreement calling for the dismissal of all  
9 claims, cross claims and counterclaims in this action, with the  
10 exception of the claim which the court ordered to be arbitrated.  
11 Upon the representation of defense counsel that progress is being  
12 made toward the preparation and filing of papers finalizing such  
13 dismissals, a telephonic status conference is set for January 25,  
14 2010, at 3:00 p.m.. Unless progress is made promptly, the court  
15 may have no choice but to set aside the stay previously ordered  
16 and set this matter for trial.

#### 17 Arbitration

18 In the second part of their motion, plaintiffs ask the  
19 court to require that the arbitration ordered in its April 16,  
20 2009 Order be submitted to the Sacramento County Bar Association  
21 ("SCBA") for arbitration in that forum pursuant to California  
22 Business and Professions Code § 6200 et seq. In support of this  
23 request, plaintiffs seize upon the language in the agreement that  
24 talks about the "mandatory fee arbitration." The court, however,  
25 interprets that language as a simple reference to the terms of  
26 court's Order mandating binding arbitration of the attorney fees

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28 <sup>1</sup> San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 162 Cal. App. 3d 358 (1984).

1 as required by Cal. Civ. Code § 2860(c). It is not an agreement  
2 to abide by the provisions of section 6200 et seq.

3 In fact, the SCBA has determined that it has no  
4 jurisdiction to hear this dispute. On December 29, 2009, the  
5 SCBA panel appointed to determine whether the SCBA had  
6 jurisdiction to mediate the Cumis fee dispute issued a Notice of  
7 Intended Decision on Objection to Jurisdiction to [SCBA]  
8 Mandatory Fee Arbitration Proceeding. (Supp. Decl. Gary L.  
9 Selvin Ex. B.) The Notice informed the parties that the SCBA  
10 intended to rule that it lacked jurisdiction to mediate the Cumis  
11 fee dispute. (Id. at 5 (stating, inter alia, that “[t]here  
12 simply is no fee dispute between an attorney and a client in this  
13 matter.”))<sup>2</sup>

14 Section 2860(c) provides that “[a]ny dispute concerning  
15 attorney’s fees not resolved by these methods shall be resolved  
16 by final and binding arbitration by a single neutral arbitrator  
17 selected by the parties to the dispute.” It makes no reference,  
18 express or implied, to California Business and Professions Code §  
19 6200 et seq. The court therefore concludes that the parties are  
20 not bound to the arbitrate their dispute in a proceeding before  
21 the SCBA. Instead, they are required by section 2860(c) to  
22 select a single neutral arbitrator to resolve their dispute.  
23 Absent a petition by one of the parties, it is not the  
24 responsibility of this court to select the arbitrator or to  
25 further instruct the parties how to proceed with their

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26  
27 <sup>2</sup> Plaintiffs have since requested that the SCBA  
28 arbitration panel delay issuing a final order until the court  
rules on plaintiffs’ instant motion. (Decl. Joanna R. Mendoza  
Ex. B. (Docket No. 83))

1 arbitration. See Cal. Code Civ. P. § 1281.6.

2 IT IS THEREFORE ORDERED that plaintiffs' motion to  
3 enforce the settlement agreement be, and the same hereby is,  
4 DENIED.

5 DATED: January 19, 2010

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8 WILLIAM B. SHUBB  
9 UNITED STATES DISTRICT JUDGE  
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