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FILED

SEP 21 2018

CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY 
 DEPUTY CLERK

and

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13 Attorneys for Defendant
 14 Woodland Park Family Medicine, LLC

**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA**

SPENCER FANE LLP
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15 ASCENTIUM CAPITAL, LLC, a Delaware
 16 limited liability company,

Case No. 2:18-CV-00545-JAM-EFB

Plaintiff,

**STIPULATION BY AND BETWEEN
 PLAINTIFF ASCENTIUM CAPITAL,
 LLC AND DEFENDANT WOODLAND
 PARK FAMILY MEDICINE, LLC
 REGARDING SETTLEMENT AND
 REQUEST TO VACATE MINUTE
 ORDER DATED SEPTEMBER 12, 2018;
 ORDER THEREON**

v.

20 WOODLAND PARK FAMILY MEDICINE,
 21 LLC, a Colorado limited liability company,

**THE HONORABLE JOHN A. MENDEZ,
 JUDGE PRESIDING**

Defendant.

TRIAL DATE: NONE SET

25 **TO THE HONORABLE JOHN A. MENDEZ, UNITED STATES DISTRICT**
 26 **COURT JUDGE:**

27 Plaintiff, Ascentium Capital, LLC, a Delaware liability company ("Plaintiff"), by and
 28

1 through its attorneys of record, Andrew K. Alper, Frandzel Robins Bloom & Csato, LC, on the
2 one hand, Defendant Woodland Park Family Medicine, LLC, a Colorado limited liability
3 company ("Defendant"), by and through its attorneys of record, Jacob Hollars, of Spencer Fane
4 LLP, hereby notify the Court that the parties have stipulated and agreed to a settlement of this
5 case. The parties also request that this Court, pursuant to F.R.C.P. 60(b) vacate its Minute Order
6 of September 12, 2018, and state as follows:

7 1. Under F.R.C.P. 60(b), this Court may relieve a party of a final judgment or order
8 due to "mistake, inadvertence,...or excusable neglect" and when apply a judgment is no longer
9 equitable. F.R.C.P. 60(b)(1) & (5).

10 2. While Defendant's Motion to Dismiss was pending, the parties began negotiating a
11 settlement of this case.

12 3. That settlement was finalized around the time that Plaintiff's response to that
13 Motion was due.

14 4. The Plaintiff and Defendant ("the Parties") executed the settlement agreement as
15 of September 12, 2018 prior to the Court ruling on the Motion to Dismiss. .

16 5. Due to an oversight, counsel for Defendant inadvertently neglected to advise
17 Chambers of the pending settlement and to request the Motion to Dismiss be removed from the
18 hearing calendar.

19 6. Thus, because the settlement was agreed to prior to the Court's Minute Order and
20 was fully executed on that date and because of Defendant's counsel's inadvertent and excusable
21 neglect, this Court should vacate the Minute Order of September 12, 2018.

22 7. The settlement contemplates a payment plan over a long period of time and the
23 Parties will make a Motion to Dismiss the case without prejudice requesting the Court to retain
24 jurisdiction to enforce the Settlement Agreement. As a result, the Parties are requesting that the
25 Court vacate its Minute Order of Dismissal.

26 WHEREFORE the Parties request that this Court vacate its Minute Order dated
27 September 12, 2018, reopen the case, and then Plaintiff will file a Motion to Dismiss the case
28 without prejudice within 5 days from the date the Order is vacated with the Court retaining

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jurisdiction to enforce the settlement agreement.

DATED: September 19, 2018 FRANDZEL ROBINS BLOOM & CSATO, L.C.

By: *s/ Andrew K. Alper*
ANDREW K. ALPER
Attorneys for Plaintiff
ASCENTIUM CAPITAL, LLC

DATED: September 19, 2018 SPENCER FANE

By: *s/ Jacob F. Hollars*
JACOB F. HOLLARS, admitted *pro hac vice*
Attorneys for Defendant
WOODLAND PARK FAMILY MEDICINE,
LLC

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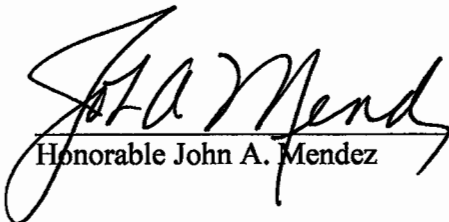
ORDER

The Court having read the foregoing Stipulation By and Between Plaintiff Ascentium Capital, Llc And Defendant Woodland Park Family Medicine, Llc Regarding Settlement And Request To Vacate Minute Order Dated September 12, 2018, and good cause appearing therefore,

IT IS HEREBY ORDERED:

The Court's Minute Order dated September 12, 2018 is hereby vacated. The Clerk of the Court shall reopen the case, and then Plaintiff shall file a Motion to Dismiss the case without prejudice within 5 days from the date of this Order.

Dated: 9.21.2018



Honorable John A. Mendez

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the above pleading was served via the Court's CM/ECF
3 system on the following on this 19th day of September, 2018:
4

5
6 Andrew K. Alper
7 Marshall J. August
8 Frandzel Robins Bloom & Csato, L.C.
9 1000 Wilshire Blvd., 19th Floor
10 Los Angeles, CA 80017

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/s/Jacob F. Hollars
Jacob F. Hollars

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