

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

OSCAR BRAUN, ANDREA BRAUN, AND  
THE OSCAR A. BRAUN TRUST DATED  
1996,

No. C 03-03415 MEJ

**ORDER ON PLAINTIFFS' MOTION FOR  
ENFORCEMENT OF SETTLEMENT  
AGREEMENT**

Plaintiffs,

vs.

COUNTY OF SAN MATEO,

Defendant.

**I. INTRODUCTION**

Pending before the Court is Plaintiffs Oscar Braun, Andrea Braun, and the Oscar A. Braun Trust Dated 1996's Motion for Enforcement of Settlement Agreement (Dkt. #268). Defendant County of San Mateo has filed an Opposition (Dkt. #271), to which Plaintiffs filed a Reply (Dkt. #273). For the reasons set forth below, the Court DENIES Plaintiffs' Motion.

**II. BACKGROUND**

Plaintiffs initiated this action by filing a Complaint for Violation of Civil Rights against the County on July 22, 2003. (Dkt. #1.) Plaintiffs thereafter filed their First Amended Complaint on September 4, 2003. (Dkt. #11.) Briefly stated, Plaintiffs alleged that, in retaliation for their criticism of the County's policies and practices, the County discriminated against them in violation of their constitutional rights. In particular, Plaintiffs alleged that the County denied certain permit

1 applications relating to their property, which severely diminished the value of the property and  
2 caused them to lose lucrative contracts relating to its use.

3 On October 26, 2005, the case proceeded to trial before Judge Martin Jenkins. (Dkt. #246.)  
4 On November 1, 2005, Magistrate Judge Bernard Zimmerman held a settlement conference with the  
5 parties. (Dkt. #251.) That night, the parties reached a settlement, which Judge Zimmerman put on  
6 the record. The Court issued an Order of Conditional Dismissal on January 30, 2006. (Dkt. #258.)  
7 Subsequently, the parties reduced the terms of the settlement to writing and executed the operative  
8 Settlement Agreement on September 6, 2006. (Dkt. #265, "Declaration of Brad Yamauchi in  
9 Support of Motion for Enforcement of Settlement Agreement" ("Yamauchi Decl."), Ex. B.)

10 On March 31, 2008, Plaintiffs filed the instant Motion for Enforcement of Settlement  
11 Agreement. (Dkt. #264.) After the matter was reassigned, Plaintiffs re-noticed the instant Motion  
12 on April 11 2008. (Dkt. # #267, 268.) Since the filing of the Motion, the Court has held status  
13 conferences on December 1, 2008, and January 29, 2009.<sup>1</sup>

### 14 III. DISCUSSION

#### 15 A. Legal Standard

16 In the Ninth Circuit, "[i]t is well settled that a district court has the equitable power to  
17 enforce summarily an agreement to settle a case pending before it." *Callie v. Near*, 829 F.2d 888,  
18 890 (9th Cir.1987); *see In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). To be  
19 enforced, a settlement agreement must meet two requirements. First, it must be a complete  
20 agreement. *See Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994); *Callie*, 829 F.2d at  
21 890. Second, both parties must have either agreed to the terms of the settlement or authorized their  
22 respective counsel to settle the dispute. *Harrop v. W. Airlines, Inc.*, 550 F.2d 1143, 1144-45 (9th  
23 Cir. 1977).

24 In considering a party's request to enforce the terms of a settlement agreement, courts treat  
25 the settlement agreement like any other contract for purposes of interpretation. *See United*

---

26  
27 <sup>1</sup>Before the status conferences, the parties filed status reports, which the Court has also  
28 considered in ruling on this Motion. (Dkt. ##290, 291, 296.)

1 *Commercial Ins. Serv., Inc. v. The Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992). “Under  
2 California law, the intent of the parties determines the meaning of the contract. The relevant intent  
3 is ‘objective’ - that is, the intent manifested in the agreement and by surrounding conduct-rather than  
4 the subjective beliefs of the parties.” *Id.* (citations omitted). If the material facts concerning the  
5 existence or terms of the settlement agreement are in dispute, the court must hold an evidentiary  
6 hearing. *Callie*, 829 F.2d at 890.

7 In this matter, neither party is disputing the validity or enforceability of the Settlement  
8 Agreement. Thus, the Court turns to Plaintiffs' request to enforce specific terms of the Agreement.

9 **B. Plaintiffs' Requested Relief**

10 In their Motion, Plaintiffs contend that the County has failed to implement three of its  
11 obligations under the Settlement Agreement. First, Plaintiffs charge that the County has failed to  
12 issue building and environmental health permits to clear Plaintiffs' property of certain code  
13 violations. Second, Plaintiffs assert that the County has failed to issue a non-appealable, property-  
14 wide Coastal Development Permit ("CDP") for wireless antennae on their property. Third, Plaintiffs  
15 assert that the County has failed to timely initiate a study of the feasibility of incorporating rural  
16 areas into the County. Based on these purported breaches of the Settlement Agreement, Plaintiffs  
17 assert that they have suffered damages and are entitled to immediate relief. Specifically, they  
18 request that the Court: (1) issue an order finding the County in contempt of court for failure to time  
19 comply with the Settlement Agreement; (2) order the County to immediately issue the environmental  
20 health and building permits and a CDP that is not appealable, and fund and initiate the study by  
21 Controller Huening, or alternatively, issue an order setting a 45-day timetable to do so with  
22 enforcement or non-compliance sanctions if it fails to do so; (3) sanction the County for the amount  
23 of out-of-pocket expenses, attorneys' fees and costs and other proven damages to Plaintiffs created  
24 by the County's failure to comply with the Settlement Agreement; (4) assess emotional distress  
25 damages to Plaintiffs in an amount deemed reasonable and appropriate; (5) issue an order to show  
26 cause requiring the County to show cause why it has not complied with the settlement agreement;  
27 and (6) order any other sanctions or relief the Court finds appropriate. (Mot. at 11.)

1 The Court will address Plaintiffs' arguments relating to the breaches of the Settlement  
2 Agreement first, and then address Plaintiffs' requests for damages and other relief.

3 **C. Issuance of Building and Environmental Health Permits**

4 Plaintiffs first contend that the County failed to issue building and environmental health  
5 permits in accordance with paragraphs 5 through 7 of the Settlement Agreement. (Mot. at 6.) These  
6 paragraphs provide:<sup>2</sup>

7 5. The Releasors shall select a person or persons to serve as the final  
8 decision makers (the "Third Parties") charged with implementing  
9 compliance with the terms of the Settlement agreement dated June 25,  
10 2004, between the parties entitled Half Moon Bay Coastside  
11 Foundation et al. County of San Mateo, County of San Mateo Superior  
12 Court Case No. CIV 426174. The Releasors shall notify Michael  
13 Murphy, attorney for Releasees, of their selection, and Mr. Murphy  
14 shall have five days to approve or disapprove of the Third Party  
15 selected by Releasors. If the fifth day falls on a weekend or holiday,  
16 Mr. Murphy shall have until the next succeeding working day to  
17 approve or disapprove of the Third Parties.

18 6. The Third Parties shall make a final decision with regard to the  
19 environmental health and building permits within ninety (90) days of  
20 the effective date of this Settlement Agreement. In coming to a  
21 decision, the Third Parties shall use the terms of the Settlement  
22 Agreement in the action entitled Half Moon Bay Coastside Foundation  
23 et al. County of San Mateo, County of San Mateo Superior Court Case  
24 No. CIV 426174. The intent of this Third Party process is to reach  
25 expeditiously a final decision on legalization of the structures at issue.

26 7. The County of San Mateo shall bear the costs of any additional  
27 investigations or tests that the Third Party concludes are required to  
28 reach a decision with respect to the terms of the Settlement Agreement  
in the action entitled Half Moon Bay Coastside Foundation et al. v.  
County of San Mateo, County of San Mateo Superior Court Case No.  
CIV 426174. Third Parties shall arrange with the Releasors, directly  
or through Oscar or Andrea Braun's designated representative or  
attorney, for access to the property as necessary to carry out the Third  
Party's responsibilities.

(Yamauchi Decl., Ex. B at 3-4.) At the time Plaintiffs filed their Motion, they argued that the  
County had yet to contract with the "Third Parties" Plaintiffs nominated, namely, the environmental  
health permit consultant, Anne Jensen, and the building permit consultant, Steve Davis. (Mot. at 7.)

---

<sup>2</sup>In the Settlement Agreement, the County, along with certain other individuals, are referred to  
as the "Releasees." (Yamauchi Decl., Ex. B at 1.) Plaintiffs are referred to as the "Releasors." (*Id.*)

1 Plaintiffs charge that, based on their discussions with Ms. Jensen and Mr. Davis, the County  
2 unreasonably delayed contacting the Third Parties and then employed "artificial barriers" to prevent  
3 them from starting their review, such as requiring the Third Parties to obtain indemnity insurance  
4 and failing to provide the Third Parties with the proper documents for their work. (Mot. at 7.) As a  
5 result, Plaintiffs assert that the environmental health and building permits have not been issued,  
6 which has affected their ability to refinance or sell their property.<sup>3</sup> (Reply at 3.)

7 In their Opposition, the County does not dispute that Plaintiffs selected Ms. Jensen and Mr.  
8 Davis to serve as the Third Parties pursuant to paragraph 5. However, the County explains that,  
9 despite their efforts to communicate with Ms. Jensen and Mr. Davis, problems arose, including  
10 issues surrounding Ms. Jensen and Mr. Davis obtaining the proper insurance to serve as consultants  
11 and their failure to respond to the County's email and phone calls, all of which delayed the County  
12 from complying with paragraph 5. (Opp. at 8.) Thus, the County asserts that any delay was not due  
13 to lack of diligence on their part, but was the result of complications stemming from the unusual  
14 nature of the project.<sup>4</sup> (*Id.*)

15  
16 <sup>3</sup>Specifically, Plaintiffs assert that without permits for the water system and structures on their  
17 property, they were unable to sell or refinance the property, and ultimately were unable to pay their  
18 mortgage and faced foreclosure. (Reply at 3.) Plaintiffs also contend that the tenant on the property  
19 "has suffered severe emotional distress and harm for over six years now in not being able to live  
peacefully and conveniently in his home." (Motion at 7.) The tenant, however, is not a party to the  
Settlement Agreement and Plaintiffs fail to offer any explanation of their standing to seek damages  
based on their tenant's alleged injuries.

20 <sup>4</sup>For instance, with respect to Mr. Davis, the County indicates that it began corresponding with  
21 Mr. Davis in February 2006 - seven months before the parties signed the Settlement Agreement. (Opp.  
22 at 8.) After the parties executed the Settlement Agreement, the County avers that it again contacted Mr.  
23 Davis in January 2007, in an attempt to move the project forward. (*Id.*) From that point, it appears that  
24 the County and Mr. Davis exchanged phone calls and email messages from March through May 2007,  
25 discussing such issues as Mr. Davis's written proposal for the project, the Independent Contractor  
26 Agreement that Mr. Davis needed to sign, and the requirement that he provide proof of insurance. (*Id.*;  
27 Dkt. #272, "Declaration of Timothy Fox in Response to Motion for Enforcement," Ex. G.) The County  
28 explains that, after May 16, 2007, Mr. Davis did not respond to its calls or email. (Opp. at 8-9.)  
Thereafter, in October 2007, the County states that it advised Plaintiffs' counsel that Mr. Davis was not  
responding to the County's efforts. (*Id.* at 9.) According to the County, at that point, Plaintiffs indicated  
that they would accept any independent building permit official. (*Id.*) Accordingly, the County  
contacted two other potential candidates, one of which the County began making arrangements with to  
work on the project. (*Id.*) However, in December 2007, Mr. Davis contacted the County and expressed  
willingness to perform the work. (*Id.*)

1 With respect to issuance of the permits, it is undisputed that since Plaintiffs filed their  
2 Motion, the County has issued the environmental health and building permits. Specifically, in the  
3 parties' December 4, 2008 Joint Status Statement, the County indicated that, at that point, the Third  
4 Parties had completed their review of the permit applications, performed inspections of the property,  
5 and issued written reports documenting their findings. (Dkt. #291.) However, because neither  
6 report gave the County instructions regarding issuance of the permits, and the Settlement Agreement  
7 vested decision-making authority in the Third Parties, the County requested that the Third Parties  
8 expressly indicate whether to issue permits for two structures that were no longer on Plaintiffs'  
9 property. (*Id.* at 3-4.) Subsequently, in the parties' January 22, 2009 Joint Status Statement, the  
10 County indicated that the five building permits that Mr. Braun signed in court on December 11, 2008  
11 had been issued. (Dkt. #296.) It further indicated that the Third Party issued a supplemental report  
12 on December 15, 2008, instructing the County to issue environmental health permits for the well and  
13 septic system on Plaintiffs' property. (*Id.* at 2.) Because the County has now issued the  
14 environmental health and building permits that are the focus of paragraph 6 of the Settlement  
15 Agreement, there is no further action on the part of the County pertaining to the permits, or with  
16 respect to the Third Parties. The Court therefore DENIES Plaintiffs' request for enforcement of the  
17 Settlement Agreement with respect to issuance of the building and environmental health permits for  
18 Plaintiffs' property.

19 The issue then becomes whether Plaintiffs have a claim to damages stemming from the  
20 County's conduct in dealing with the Third Parties and issuing the permits. As indicated above,

21 \_\_\_\_\_  
22 With respect to Ms. Jensen, the County explains that, after Plaintiffs nominated her, issues arose  
23 concerning her impartiality because she was a part-time County employee. (*Id.* at 9; Fox Decl., Ex. F.)  
24 The County indicates that it contacted Ms. Jensen regarding permit consultant position in January 2007.  
25 (*Id.* at 9.) Thereafter, in March 2007, the County confirmed an hourly rate with Ms. Jensen and mailed  
26 her a packet of documents that included the Independent Contractor Agreement and a proposed Scope  
27 of Work. (*Id.*) However, the County avers that it did not receive a response from Ms. Jensen. (*Id.*) The  
28 County sent a follow-up email in May, inquiring about the status of insurance that would cover her  
consultant work. (*Id.*) According to the County, Ms. Jensen finally obtained the insurance in September  
2007, and she delivered proof of insurance to the County the following month. (*Id.* at 10.) The County,  
however, discovered that the proof of insurance was incomplete, so it emailed and called her in late  
October about this issue. (*Id.*) The County avers that Ms. Jensen did not respond. (*Id.*)

1 Plaintiffs argue that the County inexcusably delayed in contacting the Third Parties and obstructed  
2 them from beginning their decision-making process concerning issuing permits for the structures on  
3 Plaintiffs' property. The County, on the other hand, maintains that it diligently communicated with  
4 both Ms. Jensen and Mr. Davis, and that any delay stemmed from the Third Parties' lack of  
5 communication and difficulties meeting the requirements to perform the work. After carefully  
6 considering the parties' positions on this issue and thoroughly reviewing the documents the parties  
7 have submitted in support, the Court is unpersuaded by Plaintiffs' argument. Particularly, reviewing  
8 the correspondence between the County and the Third Parties rebuts Plaintiffs' charge that the  
9 County strategically held up the Third Party review either by not communicating with the Third  
10 Parties or imposing unnecessary prerequisites on their work. The Court therefore finds no basis to  
11 award damages to Plaintiffs in connection with the issuance of the permits.

12 **D. Coastal Development Permit**

13 Plaintiffs next contend that the County failed to issue a CDP in accordance with the  
14 Settlement Agreement. Paragraph 9, subparts (a) through (d), set forth the County's obligations with  
15 respect to issuing a CDP, and provide:

16 9. a) On behalf of the Releasees, the County of San Mateo will  
17 approve a "property-wide" Coastal Development Permit for the parcel  
18 number of the Braun ranch, conforming to the requirements of the  
19 County's Local Coastal Program, and any associated use permit, for a  
wireless antenna site on the Releasor's property located at 1589  
Higgins Canyon Road, Half Moon Bay, California, within ninety (90)  
days of the effective date of this Settlement Agreement.

20 b) The "property-wide" Coastal Development Permit will identify as  
21 broadly as possible those areas on the property where the wireless  
22 antenna site may or may not be located. The Coastal Development  
Permit will not limit the number of antennae that could be placed on  
the antenna structure at the site.

23 c) Nothing in this Agreement shall be construed to prevent the  
24 Releasors or any other person or entity from applying for and/or being  
25 granted a Coastal Development Permit or building permit for  
additional wireless facilities on the Releasors' property at any point in  
the future.

26 d) Nothing in this Agreement is intended to provide any party,  
27 including any third party, with any right to appeal to any regulatory  
28 body the granting of the Coastal Development Permit pursuant to this

1 Agreement. Whether such right to appeal exists is disputed by the  
2 parties and should be determined in accordance with established laws  
3 and regulations independent of this Agreement. Releasees shall not  
directly or indirectly take any such appeal or cause or support directly  
or indirectly any third party to take such an appeal.

4 (Yamauchi Decl., Ex. B at 4-5.) It is undisputed that the County issued a CDP for Plaintiffs'  
5 property at a County Board of Supervisors meeting on January 23, 2007. (Fox Decl., Ex. B.) The  
6 County, therefore, contends that it fully satisfied its obligations under the Settlement Agreement  
7 relating to the CDP. Plaintiffs, however, argue that the Settlement Agreement requires the County to  
8 issue a *non-appealable* CDP. Because the California Coastal Commission appealed the CDP that  
9 the County issued, Plaintiffs argue that the County is in breach of the Settlement Agreement. The  
10 Court disagrees.

11 First, contrary to Plaintiffs' contention, the requirement that the County issue a "non-  
12 appealable" CDP does not appear anywhere in the language of the Settlement Agreement.  
13 Nevertheless, Plaintiffs argue that their "intent, as expressed by them during the Settlement  
14 Conference with Magistrate Judge Zimmerman, throughout multiple communications among County  
15 Counsel and Plaintiffs' Counsel, and in the written Settlement Agreement itself, was for the CDP to  
16 be issued in a manner in which it would not be subject to appeal by any third party." (Mot. at 9.)  
17 Pursuant to California law, the parties objective intent, as evidenced by the language of the contract,  
18 rather than the subjective intent of one of the parties, controls interpretation of the contract. *See*  
19 *Cedars-Sianai Med. Ctr. v. Shewry*, 137 Cal. App. 4th 964, 980 (Cal. App. 2006). Looking at the  
20 plain language of the Settlement Agreement, paragraph 9, subparts (a) and (b) expressly lay out the  
21 requirements for the CDP that the County was to issue. Neither subpart (a) or (b) states that the  
22 CDP had to be "unappealable." Concurrently, paragraph 9 subpart (d) directly addresses issues  
23 relating to an appeal of the CDP, including acknowledging that the parties disagreed over whether a  
24 right to appeal existed. While subpart (d) indicates that the Settlement Agreement does not create  
25 any right to appeal the CDP - either in the parties or a third party - and additionally prohibits the  
26 County from appealing or assisting a third party in appealing the CDP, nothing in subpart (d)  
27 requires the County to issue an unappealable CDP. Thus, whatever Plaintiffs' subjective intent, the



1 plain, objective language of the Agreement does not evince any requirement that the County had to  
2 issue an unappealable CDP. Plaintiffs are therefore seeking to impose a requirement on the County  
3 that does not exist in the language of the Agreement.

4 Further, as the County points out, any requirement that the County issue a non-appealable  
5 CDP would run up against California law providing for appeal of a CDP such as the one issued in  
6 this matter. The County explains that, pursuant to California Public Resources Code § 30603(a)(4)<sup>5</sup>,  
7 the California Coastal Commission has appellate jurisdiction when a project is a not a "principally  
8 permitted use" in its zoning district. (Opp. at 5.) Thus, the County asserts that the parties could not  
9 have contracted to divest the California Coastal Commission of its jurisdiction over the CDP.  
10 Plaintiffs proffer no response as to how their private contract could override California law  
11 regarding third party appeals of the CDP, or otherwise restrict the Coastal Commission's authority to  
12 appeal the CDP. Consequently, the Court finds that Plaintiffs argument that the CDP had to be non-  
13 appealable fails for this reason as well.

14 In their Reply, Plaintiffs shift the focus of their argument relating to the CDP and contend  
15 that, in approving a deficient CDP, the County failed to comply with the Settlement Agreement.  
16 Specifically, they assert: "in Plaintiffs' view, the County approved a CDP that did not contain a  
17 project description as required to conduct an Environmental Impact Report under the California  
18 Environmental Quality Act in compliance with the Local Coastal Plan." (Reply at 3-4.) Further,  
19 Plaintiffs argue that, because the County acted without a CDP application from them, they never had  
20 an opportunity to state a project description to avoid a Coastal Commission appeal or any other

---

21  
22 <sup>5</sup>Section 30603(a)(4) provides:

23 (a) After certification of its local coastal program, an action taken by a  
24 local government on a coastal development permit application may be  
25 appealed to the commission for only the following types of  
26 developments:

27 []

28 (4) Any development approved by a coastal county that is not designated  
as the principal permitted use under the zoning ordinance or zoning  
district map approved pursuant to Chapter 6 (commencing with Section  
30500).

1 appeal. They assert that Mr. Braun notified County Counsel of these violations via email two weeks  
2 before the Board appealed the CDP, but the County neither responded nor changed its course of  
3 action. (Reply. at 4.) The Court, however, is unconvinced by Plaintiffs' arguments. Specifically,  
4 Plaintiffs have not presented any evidence suggesting that the County intentionally or even  
5 negligently approved a defective CDP in an effort to encourage an appeal. In fact, examining the  
6 email from Mr. Braun to the County which Plaintiffs proffer in support of their argument reveals that  
7 Mr. Braun previously took the position that "[t]he Settlement Agreement does not call for the Oscar  
8 A. Braun Trust to apply for a CDP application within ninety (90) days of the effective date. The  
9 Settlement Agreement requires the County of San Mateo to issue a property wide CDP within 90  
10 days of signing the [A]greement." (See Dkt. #274, "Declaration of Brad Yamauchi in Support of  
11 Reply," Ex. G.) The Court therefore rejects this argument as a basis to find that the County breached  
12 the Settlement Agreement.

13 In sum, the Court finds that the County complied with its obligation to approve a CDP in  
14 accordance with the terms of the Settlement Agreement. Accordingly, the Court **DENIES** Plaintiffs'  
15 Motion for Enforcement with respect to this issue.

16 **E. Rural Incorporation Feasibility Study**

17 Paragraph 10 of the Settlement Agreement provides:

18 10. On behalf of the Releasees, the Board of Supervisors of the  
19 County of San Mateo will authorize and pay for a study to be  
20 conducted by the County Controller, Tom Huening, to determine the  
21 feasibility of incorporating the rural and unincorporated areas of San  
Mateo County as delineated by Exhibit A "Proposed Coastal Rural  
Lands Incorporation Area."

22 In their Motion, Plaintiffs contend that the County failed to initiate a feasibility study in accordance  
23 with paragraph 10. The County, however, argues that it fully complied with this provision. The  
24 Court agrees with the County.

25 As the County points out, Controller Huening began the process of conducting the study in  
26 November 2007, when he issued a Request for Proposals for the rural incorporation study. After  
27 reviewing the proposals he received, Controller Huening hired a consulting firm, Winzler & Kelly,

1 to perform the study. On June 20, 2008, Winzler & Kelly issued a written report to Controller  
2 Huening entitled, "Initial Feasibility Study." (See Dkt. #279, Ex. A.) The County contends that, at  
3 this point, the County had rendered full performance of its obligations under paragraph 10 of the  
4 Settlement Agreement. The Court agrees.

5           Nevertheless, in their Reply, Plaintiffs argue - for the first time - that the Settlement  
6 Agreement requires *Controller Huening* to conduct the feasibility study, not a third party. (Reply at  
7 4.) Plaintiffs contend that, "[i]f it was the intent of the parties to delegate this action to a third party  
8 consultant or contractor, specific language would be in the Settlement Agreement in the same  
9 manner and language as the Agreement states with respect to 'Third Party' consultants hired to  
10 review the environmental health and building permit process." (Reply at 4.) Plaintiffs' argument  
11 misses the mark. Contrary to Plaintiffs' characterization, Controller Huening retained control over  
12 the feasibility study, including issuing requests for proposals, reviewing the requests, hiring Winzler  
13 & Kelly, and reviewing the written study that was issued. Nothing in paragraph 10 prescribed the  
14 manner in which Controller Huening was to conduct the study or otherwise restricted the resources  
15 he could utilize to complete the task. Thus, Controller Huening's decision to hire external experts to  
16 undertake the field work of the study was within his discretion and did not invalidate the resulting  
17 feasibility study.

18           In sum, having found that the County complied with its obligations relating to the rural  
19 incorporation feasibility study, the Court **DENIES** Plaintiffs' Motion for Enforcement with respect  
20 to this issue.

21 **F. Damages and Other Requested Relief**

22           In their Motion, Plaintiffs request that the Court specifically enforce the terms of the  
23 Settlement Agreement that the County has failed to comply with and award Plaintiffs damages  
24 stemming from the County's breaches of the Agreement. Plaintiffs also seek an order finding the  
25 County in contempt and requiring the County to show cause as to why it has not complied with the  
26 Settlement Agreement. As set forth above, because the Court finds that the County satisfied its  
27 obligations under the Settlement Agreement, there is no basis to support Plaintiffs' requests for  
28

1 specific performance and no basis to support an award of damages. The Court therefore **DENIES**  
2 Plaintiffs' requests. For the same reasons, the Court further **DENIES** Plaintiffs' request for fees and  
3 costs.

4 **IV. CONCLUSION**

5 For the reasons set forth above, the Court hereby **DENIES** Plaintiffs' Motion for  
6 Enforcement of Settlement Agreement (Dkt. #268) in its entirety.

7 Further, because the material terms of the Settlement Agreement have been satisfied, the  
8 Court declines to retain continuing jurisdiction over the Settlement Agreement. *See Arata v. Nu Skin*  
9 *Int'l, Inc.*, 96 F.3d 1265, 1268-69 (9th Cir. 1996).

10 **IT IS SO ORDERED.**

11  
12 Dated: March 25, 2009

  
\_\_\_\_\_  
13 MARIA-ELENA JAMES  
14 United States Magistrate Judge