

**NOT FOR CITATION**

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALCOLM COOMBS, et al.,

No. C 09-00192 JSW

Plaintiffs,

**ORDER DENYING MOTION TO  
ENFORCE SETTLEMENT  
AGREEMENT**

v.

RICHARD M. MUNOZ, et al.,

Defendants.

**INTRODUCTION**

Now before the Court for consideration is the Motion to Enforce Settlement Agreement or, in the Alternative, for Summary Judgment as to Plaintiffs' Claims, or, in the Alternative a Motion to Stay the Proceedings filed by Defendants, Richard M. Munoz, in his capacity as executor of the will of Rogan Mal Coombs, and Richard M. Munoz, in his individual capacity. Having considered the parties' papers, including supplemental briefing ordered by this Court, and relevant legal authority, the Court finds the Motion to Enforce Settlement Agreement suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the reasons set forth in the remainder of this Order, the Court denies that motion.

**BACKGROUND****A. Procedural History.**

On January 15, 2009, Plaintiffs, Malcolm Coombs ("Mal"), Judith Coombs Jones ("Judy"), and Barton Coombs ("Bart") (collectively "Plaintiffs") filed the Complaint in this

1 action.<sup>1</sup> In that Complaint, they alleged claims for Breach of Oral Contract and Breach of  
2 Implied in Fact Contract against Munoz, in his capacity as executor of the will of Rogan Mal  
3 Coombs (“Rogan”), a claim for Intentional Interference with Contractual Relations against  
4 Munoz, in his individual capacity, and a claim for Breach of Fiduciary Duty against Munoz in  
5 his capacity as executor and in his individual capacity.

6 On February 15, 2009, Munoz filed a claim for unpaid wages with the State Labor  
7 Commissioner, a dispute which arose out of Munoz’ employment with Coombs Tree Farms,  
8 Inc. (“CTF”) (the “Labor claim”). On February 23, 2009, CTF filed a complaint in Humboldt  
9 County Superior Court against Munoz (the “State Court litigation”). In the State Court  
10 litigation, CTF asserts claims against Munoz for anticipatory breach of contract, in his capacity  
11 as trustee for the Rogan Coombs Trust, for breach of fiduciary duty, in his capacity as executory  
12 of Rogan’s will and in his individual capacity, for imposition of a constructive trust, in his  
13 capacity as executory of Rogan’s will, and claims for declaratory relief in both his capacity as  
14 trustee of the Rogan Coombs Trust and his individual capacity. (*See* Docket No. 30 (Request  
15 for Judicial Notice in Support of Motion to Enforce Settlement Agreement (“RJN”), Ex. A,  
16 State Court Complaint).)<sup>2</sup>

17 Thereafter, the parties agreed to participate in a mediation in an effort to resolve the  
18 State Court litigation, the Labor claim, and this action, and the Court granted a stipulation  
19 extending Munoz’ time to respond to the Complaint. (Docket No. 11.) On May 19 and May  
20 20, 2009, the parties, represented by counsel, participated in a mediation session and reached a  
21 comprehensive settlement of all three pending proceedings. The parties memorialized their  
22 agreement in writing, the terms of which are set forth below. (Declaration of Frank R. Ubhaus  
23 (“Ubhaus Decl.”), Ex. 1 (Settlement Agreement).)

24 On May 22, 2009, the parties filed a Joint Case Management Conference statement, in  
25 which they advised the Court of the settlement. (*See* Docket No. 18 (Joint Case Management

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26 <sup>1</sup> The Court has used the Plaintiffs’ shortened first names because that is how  
27 Plaintiffs chose to identify themselves in their papers.

28 <sup>2</sup> Munoz’s request to take judicial notice of the complaint in the State Court  
litigation is GRANTED.

1 Conference Statement).) Because the parties represented that it would take thirty days to  
2 complete the settlement, the Court granted a stipulated request to a case management  
3 conference scheduled for June 12, 2009.

4 On July 10, 2009, the parties filed a further joint case management statement, in which  
5 they advised the Court that certain issues had arisen with respect to “one object” of the  
6 settlement and that they were engaged in further “settlement negotiations” in an effort to resolve  
7 that dispute. (*See* Docket No. 21 (Joint Case Management Statement at 6:4-10).) The Court  
8 continued the case management conference and ordered that, if the settlement broke down, the  
9 parties should notify the Court.<sup>3</sup> (Docket No. 23.) On August 5, 2009, the parties advised the  
10 Court that the additional settlement discussions had broken down, and, on August 21, 2009, the  
11 parties filed a further joint case management statement.

12 On August 24, 2009, the Court vacated the case management conference and ordered the  
13 parties to file certain threshold motions, “*e.g.*, a motion to amend, a motion to enforce the  
14 settlement agreement, or a motion to dismiss the Complaint,” by September 4, 2009. (Docket  
15 No. 27 (Order Vacating Case Management Conference at 1:18-19).)

16 On September 3, 2009, Plaintiffs filed the First Amended Complaint (“FAC”), in which  
17 they allege claims for Breach of Oral Contract, Breach of Implied in Fact Contract, and  
18 Promissory Estoppel against Munoz, in his capacity as executor of Rogan’s will, and claims for  
19 Constructive Fraud and Breach of Fiduciary Duty against Munoz in his capacity as executor and  
20 in his individual capacity. On September 4, 2009, Munoz filed his motion to enforce. Munoz  
21 also filed a similar motion in the State Court litigation, which has been denied. (*See* Docket No.  
22 62 (Plaintiffs’ Status Report re State Court Litigation).)

23 **B. Factual Background.**

24 Mal, Judy, and Bart are Rogan’s natural born children, and are shareholders in CTF.  
25 They each hold approximately 24% of CTF’s total shares. (FAC ¶¶ 1, 9.) Munoz is the duly  
26 appointed and qualified acting executor of Rogan’s will. (*Id.* ¶ 1.) Prior to his death, Rogan  
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28 <sup>3</sup> At that time, the parties had not advised the Court that the settlement had been  
memorialized in writing.

1 held approximately 26 % of CTF’s total shares. In the original complaint, Plaintiffs alleged that  
2 those shares were held in a revocable trust. In the FAC, they allege that “the books and records  
3 of CTF reflect that [those shares] are registered in the name of Rogan Coombs.” (*Compare*  
4 *Compl. ¶ 9 with FAC ¶ 9.*) Plaintiffs allege that Rogan promised them that he would transfer all  
5 of his shares in CTF to them upon his death. They also allege that, during his lifetime, Rogan  
6 induced them to forebear from making claims against certain property, to give up certain  
7 property, and to refrain from disposing of their shares in CTF by reiterating this promise. (FAC  
8 ¶ 14-15, 19-25).

9 As set forth above, in May 2009, the parties settled all three pending actions. Pursuant  
10 to the Settlement Agreement, CTF agreed to pay Munoz, in his capacity as trustee of the Rogan  
11 Coombs Trust, \$75,000 and agreed to convey to Munoz, in that capacity, certain CTF  
12 properties. In turn, Munoz, in his capacity as trustee of the Rogan Coombs Trust, agreed to  
13 convey to CTF “any and all interest previously held by Rogan M. Coombs in the stock of [CTF]  
14 consisting of 2,735 shares and agree[d] to surrender the stock certificates representing these  
15 shares to” CTF. (Settlement Agreement, ¶¶ 1-2.) The Settlement Agreement also included a  
16 release of claims. (*Id.* ¶ 4.) The parties also “agree[d] to sign, acknowledge and deliver the  
17 opposing party a standard form of a Release of all such claims and causes of action and to sign  
18 and deliver to each other a standard form of Dismissal with Prejudice of the actions.” (*Id.* ¶ 5.)  
19 Finally, the parties agreed that “[p]ayment of the stated settlement amounts and delivery of the  
20 assignments referred to herein shall be made as soon as possible, but no later than 30 days from  
21 the date of this agreement.” (*Id.* ¶ 7.)

22 The Court shall address additional facts, as necessary, in the remainder of this Order.

### 23 ANALYSIS

#### 24 A. Applicable Legal Standards.

25 “It is well settled that a district court has the equitable power to enforce summarily an  
26 agreement to settle a case pending before it.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1992)  
27 That power is limited to the enforcement of “complete settlement agreements.” *Id.* (emphasis in  
28

1 original). If material facts regarding the “*existence or terms* of an agreement to settle are in  
2 dispute, the parties must be allowed an evidentiary hearing.” *Id.* (emphasis in original).

3 The parties do not dispute the existence of or the terms of the Settlement Agreement.  
4 Rather, Munoz argues that the Court should enforce that agreement and dismiss this action.  
5 Plaintiffs, in turn, argue that the Settlement Agreement should be rescinded because: (1) Mr.  
6 Munoz has breached the agreement; (2) the agreement lacked a lawful object; and (3) the  
7 Plaintiffs’ consent was given by mistake. Each of Plaintiffs’ arguments is based on the  
8 provision of the Settlement Agreement which required Munoz to surrender the stock certificate  
9 representing Rogan’s CTF shares within thirty days. According to Munoz, the stock certificate  
10 has been lost.

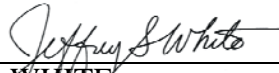
11 Under California law, “[a] party to a contract may rescind the contract ... [i]f the consent  
12 of the party rescinding was given by mistake....” Cal. Civ. Code § 1689(b)(1). A mistake of  
13 fact consists of “a mistake, not caused by the neglect of a legal duty on the part of the person  
14 making the mistake, and consisting in ... [a] [b]elief in the present existence of a thing material  
15 to the contract, which does not exist.” Cal. Civ. Code § 1577. In this case, all parties entered  
16 into the Settlement Agreement believing that the stock certificate representing Rogan’s shares  
17 in CTF had been assigned to the Rogan Coombs Trust and that Munoz could transfer that stock  
18 to Plaintiffs within the thirty-day time frame set forth in paragraph 7 of the Settlement  
19 Agreement. It is now evident from the record that there is a dispute as to who owned the stock  
20 at the time the parties entered into that agreement and this dispute has prevented the parties  
21 from concluding the settlement within the required thirty days. The Court, therefore, concludes  
22 that the parties’ consent was obtained via a mutual mistake. The Court also finds that this  
23 mutual mistake does not pertain to a collateral matter of the parties’ agreement, because with  
24 the exception of the mutual releases, the CTF shares are the only form of consideration Munoz  
25 provided to Plaintiffs as part of the settlement. For that reason, finds Munoz’ reliance on  
26 *Vickerson v. Frey*, 100 Cal. App. 2d 621 (1950) to be inapposite, and concludes that the  
27 Settlement Agreement should be rescinded. Accordingly, the motion to enforce is DENIED.  
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**CONCLUSION**

For the foregoing reasons, Munoz' motion to enforce the agreement is DENIED.<sup>4</sup> The Court recognizes that there is a strong degree of mistrust among the parties. However it concurs with Judge Hinrichs' opinion that the parties would benefit from a further attempt to reach a global resolution of their pending matters in order to avoid substantial litigation and would urge them to continue to attempt to reach a mutually agreeable resolution of this dispute. In the interim, pending further order of the Court, the Defendants' Motion to Dismiss the First Amended Complaint remains on calendar on March 5, 2010.

**IT IS SO ORDERED.**

Dated: March 1, 2010

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> Munoz also sought a stay of this litigation pending a decision from the State court on his motion to enforce. The State Court has denied that motion. Accordingly, Munoz's motion to stay is denied as moot. Munoz also asked the Court to grant summary judgment on Plaintiffs' claims based on the release set forth in the Settlement Agreement. Because the Court concludes that the Settlement Agreement cannot be enforced, that motion is DENIED.