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 9 Attorneys for Defendants Thomas Edwards  
 Construction and Design, and Thomas Edwards

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

13 MARK CASTELLUCCI

14 Plaintiff,

15 v.

16 THOMAS EDWARDS CONSTRUCTION  
 and DESIGN, a California corporation,  
 17 and THOMAS EDWARDS, an individual,

18 Defendants.

Case No. CV 09 1012 ~~SBA~~ MEJ

STIPULATION FOR:

1. CONDITIONAL SETTLEMENT;  
and
2. CONTINUED JURISDICTION  
OF THE COURT TO ENFORCE  
SETTLEMENT TERMS

[FRCP 41(a)]

20 IT IS HEREBY STIPULATED by and between the parties to this action, Mark Castellucci  
 21 (“Plaintiff”), Thomas Edwards Construction and Design and Thomas Edwards (“Defendants) by and  
 22 through their designated counsel that the above-captioned action be and hereby shall be dismissed  
 23 with prejudice pursuant to FRCP 41(a)(1):

- 24 1. In accordance with the terms and conditions of the Memorandum of Settlement  
 25 (“MOS”), attached hereto as Exhibit “A”; and
- 26 2. Subject to the continued jurisdiction of the court to enforce the terms of the  
 27 MOS and the payment schedule.

28 ///

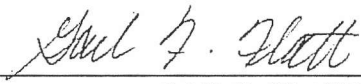
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1 The final payment in accordance with the payment schedule of the MOS is due on April 1,  
2 2012 (\$2,000 per month for 32 months, commencing October 1, 2009). The parties respectfully re-  
3 quest that the court schedule a Case Management Conference for a date thereafter at the convenience  
4 of the court to finalize dismissal or to address any default in the payments.


5  
6 Dated: Sept. 15, 2009

PROVENCHER & FLATT LLP

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10 GAIL F. FLATT  
11 Attorneys for Defendants Thomas Edwards  
12 Construction and Design, and Thomas Edwards

13  
14 Dated: Sept. \_\_\_\_\_, 2009

BOGAARDS LAW OFFICE

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18 PIETER BOGAARDS  
19 Attorneys for Plaintiff  
20 MARK CASTELLUCCI

21 The parties request is hereby GRANTED. However, because either party may file a  
22 motion to enforce the settlement agreement, the Court finds that good cause does not exist  
23 to keep this matter on its pending case list. Accordingly, the case is hereby DISMISSED,  
24 and the Clerk of Court shall close the file.

25  
26 Dated: September 17, 2009



**EXHIBIT "A"**

Castellucci v. Thomas Edwards Design & Construction, Inc., et,

Memorandum of Settlement

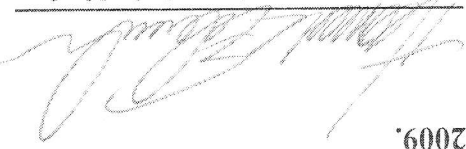
August 25, 2009


The undersigned parties, following detailed mediation before Eric A. Grover, appointed to mediate this case by the US District Court, hereby agree to the following memorandum of settlement:

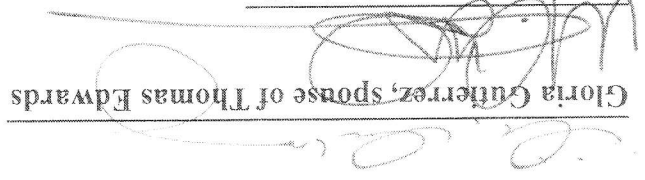
1. Defendants to pay a total of \$69,000 on the following terms: A payment of \$5,000 payable within 10 days of the date the settlement agreement is executed. Starting on the first day of October 2009 and continuing for 31 months thereafter, a monthly payment of \$2,000.
2. Defendants are to provide security against default in the form of a stipulated judgment and collateral against their real property holdings, including Thomas Edwards' personal residence and the undeveloped Napa parcel.
3. All monthly payments would be due the first of the month. After the tenth of the month, Defendants would be considered in default. The first three defaults would require a five-day cure notice before moving to enforce the stipulated judgment. After that, Plaintiff could move immediately for default on the entire loan balance on any late payment.
4. The pending action would be dismissed without prejudice now and with prejudice after the final payment was made.
5. There is no bar to early prepayment by Defendants.
6. Each side to release to the other of all claims, known or unknown; except for Plaintiff's right to enforce the settlement agreement.
7. The parties intend to enter into a more detailed settlement agreement; however, should the parties be unable to agree on the language of a more detailed settlement agreement, this Memorandum of Settlement is intended to be, and shall serve, as a valid and enforceable contract pursuant to CCP § 664.6 and any federal equivalent.




- 8. The parties agree that Eric A. Grover shall retain jurisdiction to help resolve any disputes that may arise out of the documentation of this settlement, including the drafting of the settlement agreement.
- 9. This agreement is effective August 25, 2009.

  
Thomas Edwards on behalf of  
 Thomas Edwards Design &  
 Construction, Inc.

  
Thomas Edwards, personally

  
Gloria Gutierrez, spouse of Thomas Edwards

  
Mark Castellucci, Plaintiff