

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

ACTUATE CORPORATION,  
Plaintiff,

No. C 10-05750 WHA

v.


**NOTICE RE STIPULATION  
OF DISMISSAL**

AON CORPORATION and THE  
WARRANTY GROUP, INC.,  
Defendants.

Judgment in favor of defendant The Warranty Group, Inc. and against plaintiff Actuate Corporation was entered in July 2012 (Dkt. No. 164). Plaintiff timely filed a notice of appeal (Dkt. No. 168). Subsequently, attorney’s fees were granted for defendant (Dkt. No. 176). Plaintiff timely filed a notice of appeal of that order (Dkt. No. 185). Now, because of a purported settlement, plaintiff and defendant have filed a joint “stipulation to dismissal with prejudice” (Dkt. No. 186).

This filing is improper for two reasons: *First*, it is improper under Rule 41(a)(1)(ii) because it has not been signed by all parties who have appeared (Aon Corporation). *Second*, this Court lacks jurisdiction to dismiss this action after a notice of appeal has been filed because such action improperly divests an appellate court from rendering a decision on the merits of a pending appeal. *See United Nat. Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1109 (9th Cir. 2001).

Dated: October 1, 2012.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

United States District Court  
For the Northern District of California