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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAGDA GONZALEZ, et al.,

Plaintiff,

v.

COMPASS VISION, INC., *et al.*,

Defendants.

And all related cases.

Case No. 07cv1951 AJB (WMC)

ORDER:

(1) GRANTING THIRD-PARTY
DEFENDANT MAXIMUS INC.'S
MOTION TO REOPEN ACTION
AND ENFORCE STIPULATED
SETTLEMENT; AND

(2) GRANTING IN PART AND
DENYING IN PART MAXIMUS'S
REQUEST FOR ATTORNEY'S FEES

(Doc. No. 346)

On March 4, 2011, the Court approved a stipulated settlement agreement (“Settlement Agreement”) between Third-Party Plaintiff Compass Vision, Inc. (“Compass”) and Third-Party Defendant Maximus, Inc. (“Maximus”), and retained jurisdiction to enforce the Settlement Agreement. (Doc. No. 343.) Presently before the Court is Maximus’s motion to reopen the action, enforce the Settlement Agreement, and award Maximus its attorney’s fees incurred in enforcing the Settlement Agreement. (Doc. No. 346.) To date, Compass has not filed an opposition to Maximus’s motion. In accordance with Civil Local Rule 7.1.d.1, the Court finds the motion suitable for determination on the papers and without oral argument. For the reasons set forth below, the Court GRANTS Maximus’s motion to reopen the action and enforce the Settlement Agreement, and GRANTS IN PART AND DENIES IN PART Maximus’s request for attorney’s fees. (Doc. No. 346.)

1 **BACKGROUND**

2 The underlying action relates to a contract dispute between Maximus and Compass
3 regarding the administration of the California Department of Consumer Affairs’
4 Diversion Program (“Diversion Program”). (Doc. No. 81 at 2.) Pursuant to a subcontract
5 between the parties, Maximus served as the administrator of the Diversion Program, and
6 retained Compass as a third-party administrator responsible for Diversion Program
7 participants’ drug and alcohol testing. (Doc. No. 103-3 at 2.) On October 5, 2007,
8 several Diversion Program participants filed claims against Compass for negligence.
9 (Doc. No. 1.) Thereafter, Compass filed third-party claims against Maximus for breach
10 of contract, contractual indemnity, equitable indemnity and contribution, and declaratory
11 relief. (Doc. No. 85.) On October 5, 2010, the Court granted summary judgment in favor
12 of Maximus on each of Compass’s third-party claims, and on March 3, 2011, Maximus
13 moved for attorney’s fees pursuant to its subcontract with Compass. (Doc. No. 331-1 at
14 7.)

15 On March 17, 2011, the parties executed the Settlement Agreement currently at
16 issue, which specified that Compass would pay Maximus \$300,000.00 in attorneys’ fees
17 over the course of the next seven years. (Doc. No. 339 at 3:27-4:6.) In the event
18 Compass failed to pay according to the terms set forth in the Settlement Agreement,
19 Maximus had the right to recover the full amount due and owing under the Settlement
20 Agreement, and to recover all attorney’s fees incurred in enforcing the Settlement
21 Agreement. (*Id.* at 5:23-27.) The Court approved the Settlement Agreement on March
22 24, 2011. (Doc. No. 343 at 2.)

23 **LEGAL STANDARD**

24 “[I]t is . . . well settled in the usual litigation context that courts have inherent
25 power summarily to enforce a settlement agreement with respect to an action pending
26 before it; the actual merits of the controversy become inconsequential.” *Dacanay v.*
27 *Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978) (citations omitted); *see also Callie v.*
28 *Near*, 829 F.2d 888, 890 (9th Cir. 1987) (“It is well settled that a district court has the

1 equitable power to enforce summarily an agreement to settle a case pending before it.”);
2 *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994) (affirming summary
3 enforcement of settlement agreement by bankruptcy court where there was no dispute
4 about the formation or consummation of the agreement). “The authority of a trial court to
5 enter a judgment enforcing a settlement agreement has as its foundation the policy
6 favoring the amicable adjustment of disputes and the concomitant avoidance of costly
7 and time consuming litigation.” *Dacanay*, 573 F.2d at 1078 (citation omitted). To be
8 enforced, a settlement agreement must be complete and both parties must have agreed to
9 the terms of the settlement. *See Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th
10 Cir. 1994).

11 “Enforcement of a settlement agreement . . . is more than just a continuation or
12 renewal of the dismissed suit, and hence requires its own basis for jurisdiction.”
13 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). A district court
14 lacks jurisdiction to enforce a settlement agreement following a dismissal of the action
15 unless the district judge either: (1) expressly in the dismissal order, retains jurisdiction
16 over the settlement agreement; or (2) incorporates the terms of the settlement agreement
17 in the dismissal order. *Id.* at 381. If the court does not retain jurisdiction to enforce the
18 settlement agreement, the vehicle for the enforcement of the settlement agreement is a
19 breach of contract claim in another proceeding, where “part of the consideration [for the
20 contract] was dismissal of an earlier federal suit.” *Id.*

21 “[W]here material facts concerning the existence or terms of an agreement to settle
22 are in dispute, the parties must be allowed an evidentiary hearing.” *Callie v. Near*, 829
23 F.2d 888, 890 (9th Cir. 1987) (holding that district court erred in granting entry of
24 judgment without first holding requested evidentiary hearing after plaintiffs requested
25 evidentiary hearing challenging the existence and validity of the settlement agreement).
26 However, an evidentiary hearing is not required where the settlement agreement itself is
27 not disputed. *See, e.g., Calcor Space Facility, Inc. v. McDonnell Douglas Corp.*, 5 F.
28 App’x 787, 789 (9th Cir. 2001) (district court did not err in enforcing settlement

1 agreement where no party requested evidentiary hearing, court held hour-long hearing on
2 motion to enforce the settlement agreement and considered detailed memoranda and
3 declarations from several people, and no parties requested cross-examination of any of
4 the declarants); *Situ v. Northrop Grumman Corp.*, 49 F. App'x 185 (9th Cir. 2002).

5 DISCUSSION

6 **I. Motion to Enforce the Settlement Agreement**

7 Maximus's instant motion seeks to enforce the Settlement Agreement pursuant to
8 Paragraph 10 of the Agreement, which states that the Court retains jurisdiction to enforce
9 the terms of the Settlement Agreement until all payments have been made. As a result,
10 because Compass has not made a payment since December 21, 2012, Maximus seeks a
11 court order requiring Compass to pay \$297,950.00, the total amount still due and owing.
12 (Doc. No. 346.) Compass does not oppose the Court's continuing jurisdiction to enforce
13 the Settlement Agreement or the total amount requested by Maximus.

14 As the parties expressly provided for the Court's continuing jurisdiction over any
15 claims and disputes arising from the Settlement Agreement, and there is no dispute as to
16 the material facts concerning the formation, existence, or terms of the Settlement
17 Agreement, the Court finds it has jurisdiction over the motion and may entered the
18 requested judgment to the extent provided for in the Agreement. *See, e.g., Tranquilli v.*
19 *VSF Investments, Inc.*, No. 07-cv-433 LJO, 2008 WL 1788022, at *2 (E.D. Cal. Apr. 18,
20 2008) (granting motion to enforce settlement agreement where parties stipulated to the
21 court's jurisdiction to enforce the agreement, defendants failed to make monthly
22 payments under agreement, such failure accelerated the total sum owed, and defendants
23 did not oppose motion); *U.A. Local 342 Joint Labor-Mgmt. Comm. v. S. City*
24 *Refrigeration, Inc.*, No. 09-cv-3219 JCS, 2010 WL 1293522, at *2-4 (N.D. Cal. Mar. 31,
25 2010) (granting motion to reopen case and enter judgment against defaulting defendant
26 where stipulated entry of judgment provided that judgment shall be entered against
27 defendant if it defaulted under the settlement agreement).

28 Pursuant to Paragraph 1 of the Settlement Agreement, Compass was required to

1 pay Maximus \$300,000.00 over seven years, which was dictated by the following
2 payment schedule:

3 \$1,000.00 by the fifth day of each month starting from January 5, 2012 and
4 ending on December 5, 2013;

5 \$3,000.00 by the fifth day of each month starting from January 5, 2014 and
6 ending on December 5, 2014;

7 \$5,000.00 by the fifth day of each month starting from January 5, 2015 and
8 ending on December 5, 2018.

9 (Doc. No. 339 at 3:27-4:6.) The Settlement Agreement further provided that in the event
10 Compass failed to make the specified payment by the tenth day of any month, payment
11 would be considered late. (*Id.* at 4:11-13.) The parties agreed that Compass would be
12 assessed a late payment penalty of 5% of the unpaid balance owed for that payment
13 period the first time a payment was late, and a 15% late payment penalty for every
14 subsequent late payment. (*Id.* at 4:14-21.)

15 Finally, in the event payment was not received by the tenth day of the month, the
16 Settlement Agreement provided Compass until the fifth day of the following month to
17 tender payment in full, including accrued penalties. (*Id.* at 4:22-5:1.) If Compass failed
18 to tender the full amount of the specific payment by this date, pursuant to Paragraph 6,
19 Compass would be considered “in full default” and was required to tender the entire
20 amount due and owing under the Settlement Agreement immediately. (*Id.* at 5:5-9.) The
21 Settlement Agreement further provided that the parties had to make a good faith effort to
22 resolve any disputes arising under the Settlement Agreement before seeking judicial
23 enforcement. (*Id.* at 5:18-22.)

24 Based on the above, the Court finds Compass is in breach of the Settlement
25 Agreement and Maximus is entitled to judgment in the amount of \$297,950.00. This
26 amount accounts for payments already received from Compass (\$5,100.00) and all
27 accrued late penalties (\$3,050.00). (Doc. No. 346-2 at 21.) Accordingly, the Court
28 GRANTS Maximus’s motion to reopen the case and enforce the Settlement Agreement,

1 and enters judgment in favor of Maximus in the amount of \$297,950.00, plus attorney's
2 fees as discussed below.

3 **II. Maximus's Request For Attorney's Fees**

4 Maximus also requests an attorney fee award for its enforcement efforts, which is
5 explicitly provided for in Paragraph 9 of the Settlement Agreement.¹ (Doc. No. 339 at
6 5:23-27.) Under California law, "where the contract specifically provides that attorney's
7 fees and costs shall be awarded . . . to the prevailing party, then the party who is
8 determined to be the prevailing party . . . shall be entitled to reasonable attorney's fees in
9 addition to other costs." Cal. Civ. Code § 1717(a). Because the Court has already
10 determined Maximus to be the prevailing party, the Court must only address the
11 reasonableness of the requested fees.

12 **A. Reasonableness of Attorney's Fees**

13 In calculating reasonable attorneys' fees, courts consider the following factors: (1)
14 the time and labor required; (2) the novelty and difficulty of the questions involved; (3)
15 the skill necessary to perform the legal services properly; (4) the preclusion of other
16 employment by the attorney due to acceptance of the case; (5) the customary fee; (6)
17 whether the fee is fixed or contingent; (7) time limitations imposed by the client or
18 circumstances; (8) the amount involved and the results obtained; (9) the experience,
19 reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the
20 nature and length of the professional relations with the client; and (12) awards in similar
21 cases. *LaFarge Conseils et Etudes, S.A.*, 791 F.2d at 1341-42. "The matter of
22 reasonableness of attorney's fees is within the sound discretion of the trial judge." *Stokes*
23 *v. Marsh*, 217 Cal. App. 3d 647, 656 (Cal. Ct. App. 1990); *see also Martinez v. Idaho*
24 *First Nat'l Bank*, 755 F.2d 1376, 1378 (9th Cir. 1985) (finding that a complete failure to
25

26 ¹ Paragraph 9 of the Settlement Agreement provides: "It is further understood and
27 agreed by the Parties that, subject to the provisions of sections 7 and 8, if at any time a
28 violation of any term of this Agreement is asserted by any Party hereto, that Party shall
have the right to seek judicial enforcement of the Agreement, and/or any other necessary
and proper relief, and the prevailing party shall be entitled to recover its reasonable costs
and attorneys' fees." (Doc. No. 339 at 5:23-27.)

1 consider these guidelines constitutes an abuse of discretion).

2 Here, Maximus seeks a total of \$18,372.60 in attorney’s fees and costs for the 55.6
3 hours that its attorney, Jeremy Meier (“Meier”) and his paralegal, Deborah Killion
4 (“Killion”) incurred in enforcing the Settlement Agreement. (Doc. No. 346-1 at 2.) This
5 amount includes time spent contacting Compass and Maximus regarding enforcement of
6 the Settlement Agreement, attempting to collect delinquent payments, drafting the motion
7 to enforce the Settlement Agreement, composing a reply brief, and preparing for and
8 attending oral argument.² (Doc. No. 346-2 at 41-43.) Maximus submitted a thorough
9 billing statement in support, including precise time records, detailed task descriptions,
10 and the resulting billable amounts. (*Id.*) The billing statement reflects an hourly rate of
11 \$517.50 for Meier, and an hourly rate of \$193.50 for Killion. (*Id.*) The Court does not
12 dispute that these rates are within the range of what may be considered reasonable, even
13 though both Meier and Killion’s rates are at or near the higher end, as there is sufficient
14 evidence of experience and expertise. (*Id.* at 2-5.) Therefore, the Court only considers
15 whether the time spent preparing the instant motion and the time spent corresponding
16 with Compass and Maximus was reasonable.

17 **1. Preparing the Instant Motion**

18 Of the 55.6 total hours requested, Maximus alleges that Meier and Killion spent a
19 combined 42.9 hours drafting the instant motion to enforce the Settlement Agreement.
20 (Doc. No. 346-2 at 41-43.) Broken down even farther, of the 42.9 total hours, Maximus
21 contends that Meier spent 10.8 hours (\$5,589.00) researching, writing, and revising the
22 motion, and that Killion spent 32.1 hours (\$6,211.35) drafting/revising the motion and
23 preparing the exhibits. (*Id.*) This equates to a total of \$11,800.35 in requested fees in
24 preparing the instant motion to enforce the Settlement Agreement. Such amount is
25 unreasonable. Although the Court is cognizant that this motion is related to a complex
26 case, the motion itself—a motion to enforce a stipulated Settlement Agreement—is not

27
28 ² Maximus may not recover attorney’s fees for the 6 hours Meier estimated it would take to prepare the reply brief and attend the motion hearing because Compass did not file an opposition, and the Court vacated the motion hearing.

1 complex. Accordingly, the Court GRANTS IN PART AND DENIES IN PART
2 Maximus's request and finds fees in the amount of \$7,438.50 reasonable to prepare the
3 instant motion.³

4 **2. Contacting Compass and Maximus**

5 Meier further alleges that he spent 5.8 hours attempting to contact Compass, and
6 0.9 hours communicating with Maximus regarding enforcement strategy. (Doc. No. 346-
7 2 at 41-43.) The Court does not take issue with the requested fees, and finds these hours
8 necessary and appropriate in light of the specific provisions in the Settlement Agreement
9 requiring such good faith efforts. Accordingly, the Court GRANTS Maximus's request
10 for \$3,467.25 in fees incurred in contacting Compass and communicating with Maximus.⁴
11

12 **CONCLUSION**

13 For the reasons set forth above, the Court GRANTS Maximus's motion to reopen
14 the case and enforce the Settlement Agreement, and GRANTS IN PART AND DENIES
15 IN PART Maximus's request for attorney's fees. (Doc. No. 339.) Accordingly, the
16 Court awards Maximus \$297,950.00 as the accelerated amount presently due and owing
17 under the Settlement Agreement, and \$10,905.75 in attorney's fees incurred to enforce
18 the Settlement Agreement. The Clerk of Court is instructed to enter judgment in favor of
19 Maximus and against Compass in the amount of \$308,855.75.
20

21 IT IS SO ORDERED.

22 DATED: November 25, 2013

23 
24 _____
25 Hon. Anthony J. Battaglia
26 U.S. District Judge

27 ³ The Court finds Meier reasonably expended 5.4 hours (\$2,794.50) as opposed to
28 10.8 hours, and that Killion reasonably expended 24 hours (\$4,644.00) as opposed to
32.1 hours.

⁴ 6.7 (5.8 + 0.9) multiplied by the reasonable rate (\$517.50) equals \$3,467.25.