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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES BRYANT, an individual,  
  
Plaintiff,  
  
vs.  
AMTRAK, a business form unknown; and  
DOES 1 through 50, inclusive,  
  
Defendants.

CASE NO. 08cv458-WQH-RBB

**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Enforce Settlement and Dismiss Entire Action with Prejudice, filed by Defendant Amtrak. (ECF NO. 85).

**I. Background**

On August 3, 2010, Plaintiff filed the Second Amended Complaint, which is the operative pleading in this action. (ECF No. 72). The Second Amended Complaint alleges that Plaintiff’s wallet and other personal property were stolen while Plaintiff was a passenger on a train operated by Defendant. The Second Amended Complaint asserts a single cause of action for negligence.

On September 1, 2010, Defendant filed a Motion for Summary Judgment, accompanied by affidavits and exhibits. (ECF No. 75).

On September 20, 2010, Plaintiff filed an opposition to the Motion for Summary Judgment, accompanied by two affidavits. (ECF No. 77).

On September 27, 2010, Defendant filed a reply, accompanied by evidentiary objections to Plaintiff’s affidavits. (ECF No. 78).

1 On October 29, 2010, the parties appeared for a hearing on the Motion for Summary  
2 Judgment and informed the Court that, during a settlement conference before the Magistrate  
3 Judge earlier that day, this case had settled and a joint motion to dismiss was forthcoming.  
4 (ECF No. 81).

5 On October 29, 2010, the Magistrate Judge issued an Order confirming that during the  
6 October 29, 2010 settlement conference, the parties settled the case. (ECF No. 82).

7 On December 7, 2010, this Court issued an Order requiring the parties to file a status  
8 report regarding the resolution of this case. (ECF No. 84).

9 On December 14, 2010, Defendant filed the Motion to Enforce Settlement and Dismiss  
10 Entire Action with Prejudice. (ECF NO. 85). Defendant contends:

11 The existence of a complete settlement is clear and unambiguous. Mr. Bryant  
12 and Amtrak reached an agreement to settle this lawsuit during the court-ordered  
13 mandatory settlement conference on October 29, 2010 (the 'MSC'). The  
14 essential terms of the settlement were memorialized at the MSC in a confidential  
15 'Memorandum of Settlement' that was signed by Mr. Bryant, Amtrak's  
16 corporate representative, and counsel for the parties. Although Amtrak is  
17 prepared to perform its obligations under the agreement and to finalize the  
18 settlement, Mr. Bryant has been uncooperative in effectuating the terms of the  
19 settlement. Mr. Bryant cannot avoid the deal that he agreed to simply because  
20 he may have some regrets or a complete change of heart.

21 (ECF No. 85-1 at 2). Defendant asserts that it "is prepared to finalize the settlement and to  
22 satisfy its obligations under the agreement." *Id.* at 7. Defendant "requests that this Court  
23 confirm that there is a binding settlement agreement between the parties and that the Court  
24 dismiss this action with prejudice." *Id.*

25 In support of the motion, Defendant submits a declaration from its attorney, who was  
26 present at the October 29, 2010 settlement conference before the Magistrate Judge. The  
27 declaration states:

28 Mr. Bryant, Mr. Bryant's lawyer (Mark-Robert Bluemel), Amtrak's corporate  
representative and I attended the entire [settlement conference]. Mr. Bryant and  
Amtrak reached an agreement to settle the lawsuit during the [settlement  
conference]. The agreement was memorialized in a confidential 'Memorandum  
of Settlement' that was signed by Mr. Bryant, Mr. Bluemel, Amtrak's corporate  
representative and me during the [settlement conference]. Magistrate Judge  
Brooks officiated during the entire settlement process, including the signing of  
the Memorandum of Settlement. The Memorandum of Settlement lists the  
material terms upon which the parties agreed to settle this case. Among other  
things, the confidential Memorandum of Settlement provided that a long form  
agreement would be prepared and that a certain sum of money would be paid

1 directly to Mr. Bryant.  
2 (Deacon Decl. ¶ 3, ECF No. 85-2). Defendant submits a second declaration from another  
3 attorney, which states that on November 11, 2010, she “e-mailed a long form settlement  
4 agreement and stipulation of dismissal” to Plaintiff’s attorney, and on December 1, 2010,  
5 Plaintiff’s attorney told her “that his client would not agree to sign the long form agreement.”  
6 (Saito Decl. ¶¶ 3, 6, ECF No. 85-2). According to Defendant’s attorney, at a December 3,  
7 2010 settlement disposition conference before the Magistrate Judge, Plaintiff’s attorney  
8 reiterated that his client would not sign the long form agreement. *Id.* ¶ 7.

9 Defendant provided the Court for *in camera* inspection a copy of the October 29, 2010  
10 “Memorandum of Settlement,” which provides, among other things, that the case is settled as  
11 to all claims and the agreement is confidential. The Memorandum of Settlement is signed by  
12 Plaintiff, Plaintiff’s attorney, a representative of Defendant, and Defendant’s attorney. The  
13 cover letter to the Memorandum of Settlement indicates that a copy of the cover letter and the  
14 Memorandum of Settlement was sent to Plaintiff’s attorney as well as the Court.

15 The docket reflects that no opposition or response to the pending Motion to Enforce  
16 Settlement and Dismiss Entire Action with Prejudice has been filed.

17 **II. Discussion**

18 **A. Failure to Oppose the Motion**

19 A district court may properly grant an unopposed motion pursuant to a local rule where  
20 the local rule permits, but does not require, the granting of a motion for failure to respond. *See*  
21 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). Civil Local Rule 7.1 provides: “If an  
22 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that  
23 failure may constitute a consent to the granting of a motion or other request for ruling by the  
24 court.” S.D. Cal. Civ. Local Rule 7.1(f)(3)(c). “Failure to follow a district court’s local rules  
25 is a proper ground for dismissal. Before dismissing the action, the district court is required to  
26 weigh several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the  
27 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
28 policy favoring disposition of cases on their merits; and (5) the availability of less drastic

1 sanctions.” *Ghazali*, 46 F.3d at 53 (quotation omitted).

2 Plaintiff failed to file an opposition to the Motion to Enforce Settlement and Dismiss  
3 Entire Action with Prejudice. After considering the five factors outlined in *Ghazali*, the Court  
4 finds that the first three factors outweigh the final two factors, and the motion should be  
5 granted for failure to file an opposition pursuant to Local Rule 7.1(f)(3)(c).

6 In the alternative, and in light of the public policy favoring disposition of cases on their  
7 merits, the Court addresses the merits of the Motion to Enforce Settlement below.

8 **B. Merits**

9 Because of “the high judicial favor accorded the voluntary settlement of disputes,” a  
10 “trial court has power to summarily enforce on motion a settlement agreement entered into by  
11 the litigants while the litigation is pending before it.” *In re City Equities Anaheim, Ltd.*, 22  
12 F.3d 954, 957 (9th Cir. 1994) (quotations omitted). To be enforced, a settlement agreement  
13 must meet two requirements. First, it must be a “complete agreement.” *Maynard v. City of*  
14 *San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994). Second, both parties must have either agreed  
15 to the terms of the settlement or authorized their respective counsel to settle the dispute. *See*  
16 *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144-45 (9th Cir. 1977). “Where material  
17 facts concerning the existence or terms of an agreement to settle are in dispute, the parties must  
18 be allowed an evidentiary hearing.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987)  
19 (citations omitted).

20 “The construction and enforcement of settlement agreements are governed by principles  
21 of local law which apply to interpretation of contracts generally.” *United Commercial Ins.*  
22 *Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992) (quotation omitted). “Under  
23 California law, the intent of the parties determines the meaning of the contract. The relevant  
24 intent is ‘objective’—that is, the intent manifested in the agreement and by surrounding  
25 conduct—rather than the subjective beliefs of the parties. For this reason, the true intent of a  
26 party is irrelevant if it is unexpressed.” *Id.* (citations omitted).


27 After review of the October 29, 2010 Memorandum of Settlement and the declarations  
28 submitted in support of Defendant’s Motion to Enforce Settlement, the Court finds that both

1 parties agreed to the terms of the Memorandum of Settlement, and that the parties intended the  
2 agreement to be binding. Although the Memorandum of Settlement states that a “long form  
3 agreement” is to be prepared, under California law, “[w]hen parties intend that an agreement  
4 be binding, the fact that a more formal agreement must be prepared and executed does not alter  
5 the validity of the agreement.” *Blix St. Records, Inc. v. Cassidy*, 191 Cal. App. 4th 39, ---,  
6 2010 WL 5168828, at \*6 (Cal. Ct. App. Dec. 21, 2010); *cf. Elyaoudayan v. Hoffman*, 104 Cal.  
7 App. 4th 1421, 1431 (2003) (“Having orally agreed to settlement terms before the court,  
8 parties may not escape their obligations by refusing to sign a written agreement that conforms  
9 to the oral terms.”). After considering the merits of the Motion to Enforce Settlement, the  
10 Court concludes that the Memorandum of Settlement should be enforced.

11 **III. Conclusion**

12 IT IS HEREBY ORDERED that the Motion to Enforce Settlement and Dismiss Entire  
13 Action with Prejudice is GRANTED. (ECF NO. 85). No later than fourteen (14) days from  
14 the date of this Order, Defendant shall pay Plaintiff the sum of money stated in the  
15 Memorandum of Settlement and file a notice with the Court certifying that the money has been  
16 paid. Thereafter, the Court will dismiss this action with prejudice.

17 DATED: January 26, 2011

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19 **WILLIAM Q. HAYES**  
20 United States District Judge

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