



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 SAN DIEGO ASSOCIATION OF  
12 REALTORS, INC.,

13 Plaintiffs,

14 v.

15 SANDICOR, INC., *et al.*,

16 Defendants.

Case No.: 3:16-cv-00096-MMA-KSC

**ORDER:**

(1) **DENYING DEFENDANTS'  
MOTION TO ENFORCE  
SETTLEMENT AGREEMENT; AND**

(2) **DENYING AS MOOT  
DEFENDANTS' MOTION TO FILE  
TARDY REPLY BRIEF**

[Doc. Nos. 118, 125]

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21 Presently before the Court is defendants', North San Diego Association of Realtors  
22 and Pacific Southwest Association of Realtors, *Ex Parte* Motion to Enforce a Settlement  
23 Agreement [Doc. No. 118], and a related Motion seeking leave to file a slightly tardy Reply  
24 Brief. Both Motions are opposed by plaintiff, San Diego Association of Realtors. [Doc.  
25 Nos. 123, 128]. For the reasons stated in greater detail below, the Motion to Enforce the  
26 Settlement Agreement is **DENIED** and the Motion to File the Reply Brief is **DENIED AS**  
27 **MOOT.**

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1 **BACKGROUND**

2 This case is currently stayed. [Doc. No. 116]. The District Court granted the parties’  
3 Joint Motion, finding persuasive their assertion that “the stay is necessary because the  
4 settlement agreement has a transition period and the case cannot be dismissed until the  
5 transition period has ended.” [*Id.*]. The parties signed and executed a Settlement  
6 Agreement on April 20, 2018, roughly one month before seeking a stay from the District  
7 Court. [Doc. No. 118-1].

8 Defendants filed this Motion *ex parte*, on August 31, 2018, because of an important  
9 deadline looming on September 19, 2018 in the same settlement agreement at issue. [Doc.  
10 No. 118]. The Court set an abbreviated briefing schedule [Doc. No. 121], and a motion  
11 hearing was held before Judge Crawford on September 14, 2018. Plaintiff filed its  
12 Opposition on September 10, 2018 [Doc. No. 123], and defendants filed a Reply brief on  
13 September 12, 2018 [Doc. No. 126]. Plaintiff opposes the filing of the Reply because it  
14 was not filed before the deadline provided by the Court, and allegedly introduces new  
15 evidence that was available to defendants and should have been submitted in the original  
16 Motion. [Doc. No. 128]. The hearing was attended by counsel for all parties and the Court  
17 took the matter under advisement. [Doc. No. 132].

18 **DISCUSSION**

19 Defendants allege seven breaches of the Settlement Agreement and/or Transition  
20 Agreement signed by all parties on April 20, 2018. [Doc. No. 118-1]. They argue  
21 “injunctive relief would be an appropriate remedy for defaults under the Settlement  
22 Agreement” and that “the Court should . . . enjoin SDAR from any further violation of the  
23 Settlement Agreement and Related Agreements.” [*Id.* at p. 21]. Plaintiff disagrees that the  
24 alleged conduct meets the stringent requirements for injunctive relief and further argues  
25 defendants cannot show they suffered “any harm or injury” from the alleged breaches.  
26 [Doc. No. 123, at p. 20].

27 This Court does not have jurisdiction to enforce the parties’ Settlement Agreement.  
28 No party questioned this Court’s jurisdiction in the briefing, or at the September 14, 2018

1 hearing. Yet “subject-matter jurisdiction, because it involves a court’s power to hear a  
2 case, can never be forfeited or waived.” *United States v. Colton*, 535 U.S. 625, 630 (2002).  
3 Moreover, courts have an “independent obligation to determine whether subject-matter  
4 jurisdiction exists, even in the absence of a challenge from any party.”  
5 *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *see also* Fed. R. Civ. Proc.  
6 12(h)(3).

7 Generally, “enforcement of [a] settlement agreement is for state courts, unless there  
8 is some independent basis for jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511  
9 U.S. 375, 382 (1994). That basis exists when parties are obliged “to comply with terms of  
10 [a] settlement agreement [that] had been made part of [an] order of dismissal” pursuant to  
11 Federal Rule of Civil Procedure 41. *Id.* at 381. The Supreme Court affirmed its ruling  
12 when it later wrote that “federal jurisdiction to enforce a private contractual settlement will  
13 often be lacking unless the terms of the agreement are incorporated into the order of  
14 dismissal.” *Buckhannon Bd. And Care Home, Inc. v. West Va. Dept. of Health and Human*  
15 *Res. ’s*, 532 U.S. 598, 604 at n.7 (2001). Dismissal where the Court “retains jurisdiction”  
16 to enforce the settlement agreement subjects and exposes any potential breach to  
17 supplemental jurisdiction. *Id.* Namely, a court’s power “to manage its proceedings,  
18 vindicate its authority, and effectuate its decrees.” *Id.* at 380. It is not enough that the  
19 dismissal “served as part of the consideration for the settlement agreement.” *Hagestad v.*  
20 *Tragesser*, 49 F.3d 1430, 1433 (9th Cir. 1995) (internal citations omitted). A district court  
21 must *explicitly* incorporate the terms of the settlement agreement and the parties’ obligation  
22 to abide by it into the order of dismissal. *See Ortolfo v. Silver Bar Mines, Inc.*, 111 F.3d 85,  
23 88 (1997) (“The [order of dismissal does] not commit the court to enforcing the settlement  
24 agreement, [and] expressly provide[s] that the settlement agreement is ‘not incorporated  
25 herein.’ [The *Kokkonen* exception does not apply because] the court did not commit its  
26 authority.”).

27 The Ninth Circuit held that a *dismissal* by a district court – a dismissal clearly  
28 motivated by a settlement agreement – that permitted a plaintiff “to reinstitute” its lawsuit

1 if the “settlement agreements were not performed” did not confer jurisdiction to enforce  
2 the agreement. *Ortlof* at 88. The boundaries of subject matter jurisdiction could not be  
3 stretched so far.

4 The circumstances of the instant dispute well-exceeds the facts before the *Ortlof*  
5 Court. Here, the case was stayed to give the parties time to effectuate a complex settlement  
6 agreement. [Doc. No.116]. There is no independent basis for jurisdiction over the instant  
7 dispute. And there is no basis for this Court to vindicate its authority, or effectuate its  
8 decree, where it has neither retained jurisdiction in a dismissal, nor incorporated the terms  
9 of the settlement agreement in the dismissal order.

10 Consequently, this Court is without jurisdiction to enforce the Settlement Agreement  
11 and **IT IS HEREBY ORDERED** that defendants’ Motion is **DENIED**.

12 **IT IS FURTHER ORDERED** that defendant’s Motion to File a Tardy Reply Brief  
13 is **DENIED AS MOOT**.

14 **IT IS SO ORDERED.**

15 Dated: September 15, 2018



Hon. Karen S. Crawford  
United States Magistrate Judge