**PATENT ASSIGNMENT**

Electronic Version v1.1
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**CORRESPONDENCE DATA**

Fax Number: 3103174499
Phone: 3103174466
Email: joel@voelzke.com

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Correspondent Name: IP Law Offices of Joel Voelzke
Address Line 1: 24772 W. Saddle Peak Road
Address Line 4: Malibu, CALIFORNIA 90265

**PATENT**

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Draft Major Terms of Settlement Between Joao Control & Monitoring Systems, LLC ("JCMS") and Smartvue

1. Smartvue will submit a written representation that its S9 video servers are installed in or on the same buildings, or within the same plots of property, as the video cameras from which they receive video.

2.1. Smartvue will pay JCMS Joao a 10% royalty for all revenues received from selling the Cloudvue service as a separate and additional service apart from its normal S9 system service. The Cloudvue service refers to a server located on the Internet and on a different plot of property than the property at which the cameras and S9 server are located, and controlled by Smartvue, through which a user can view video that is forwarded by one or more of the S9 servers.

2.2. The current charge for the Cloudvue service as a separate service apart from its normal S9 system service is $99/year for user accounts in addition to the one user account which is free. JCMS Joao will receive 10% of that $99/year for additional user accounts, or whatever Smartvue’s prevailing rate for that service is at the time.

3. Smartvue’s obligation to pay royalties will cease with all sales made after March 27, 2016, which is the expiration date of Patent No. 6,587,046.

4. JCMS Joao will not assert any patents against Smartvue in the future.


6. Smartvue will withdraw its RFAs.
Joel Voelzke

From: Maureen Abbey [maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 2:17 PM
To: Joel Voelzke
Cc: Tim Davis
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice
Attachments: Major Terms of Settlement (Joao and Smartvue).doc

Joel,

I made one minor edit to clarify that we are talking about JCMS and not Ray Joao. Also, Plaintiff requests that Smartvue withdraw its RFAs.

Please confirm your agreement to these edits, and I will prepare the template agreement with this additional provisions.

Regards,
Maureen

From: Joel Voelzke [mailto:joel@voelzke.com]
Sent: Monday, February 20, 2012 5:05 PM
To: Maureen Abbey
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Maureen,

My client has approved the major settlement term sheet that I sent to you. I await Joao's response.

- Joel

From: Joel Voelzke [mailto:joel@voelzke.com]
Sent: Monday, February 20, 2012 1:12 PM
To: 'Maureen Abbey'
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Maureen,

My client is tied up in a meeting so I'm awaiting approval by him, but here's what I believe he will agree to. If this is agreeable to your client, then please formalize these terms into your template settlement agreement. We can tweak them if need be after I hear back from my client.

- Joel

From: Maureen Abbey [mailto:maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 9:11 AM
To: Joel Voelzke
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice
Draft Major Terms of Settlement Between Joao Control & Monitoring Systems, LLC ("JCMS") and Smartvue

1. Smartvue will submit a written representation that its S9 video servers are installed in or on the same buildings, or within the same plots of property, as the video cameras from which they receive video.

2.1. Smartvue will pay JCMS a 10% royalty for all revenues received from selling the Cloudvue service as a separate and additional service apart from its normal S9 system service. The Cloudvue service refers to a server located on the Internet and on a different plot of property than the property at which the cameras and S9 server are located, and controlled by Smartvue, through which a user can view video that is forwarded by one or more of the S9 servers.

2.2. The current charge for the Cloudvue service as a separate service apart from its normal S9 system service is $99/year for user accounts in addition to the one user account which is free. JCMS will receive 10% of that $99/year for additional user accounts, or whatever Smartvue's prevailing rate for that service is at the time.

3. Smartvue's obligation to pay royalties will cease with all sales made after March 27, 2016, which is the expiration date of Patent No. 6,587,046.

4. JCMS will not assert any patents against Smartvue in the future.


6. Smartvue will withdraw its RFAs.
Joel Voelzke

From: Joel Voelzke [joel@voelzke.com]
Sent: Monday, February 20, 2012 2:48 PM
To: 'Maureen Abbey'
Cc: 'shernandez@rwjplc.com'
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Maureen,

Agreed and accepted.

Just to be sure that we're on the same page, I understand that the provision about Smartvue withdrawing its RFAs will be a term of the settlement rather than a condition precedent.

Please prepare the formal agreement for signature. I will add the signator's name and title for Smartvue.

- Joel

Maureen Abbey [mailto:maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 2:17 PM
To: Joel Voelzke
Cc: Tim Davis
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Joel,

I made one minor edit to clarify that we are talking about JCMS and not Ray Joao. Also, Plaintiff requests that Smartvue withdraw its RFAs.

Please confirm your agreement to these edits, and I will prepare the template agreement with this additional provisions.

Regards,
Maureen

Joel Voelzke [mailto:joel@voelzke.com]
Sent: Monday, February 20, 2012 5:05 PM
To: Maureen Abbey
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Maureen,

My client has approved the major settlement term sheet that I sent to you. I await Joao's response.

- Joel

From: Joel Voelzke [mailto:joel@voelzke.com]
Sent: Monday, February 20, 2012 1:12 PM
To: 'Maureen Abbey'

4/4/2012

Exhibit 7
Page 45
Joel Voelzke

From: Maureen Abbey [maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 4:41 PM
To: Joel Voelzke
Cc: Jackie Knapp Burt
Subject: Re: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Yes. I will send it to you shortly. In light of this agreement, please confirm whether you still intend to be present at the deposition tomorrow. It doesn't seem necessary for your client in light of this agreement.

Best regards,

Maureen V. Abbey

HENINGER GARRISON DAVIS, LLC

New Jersey Office:
220 Saint Paul Street
Westfield, New Jersey 07090
Facsimile: 908-301-9008

New York Office:
5 Penn Plaza, 23rd Floor
New York, N.Y. 10001
Telephone: 212-896-3876
Facsimile: 646-378-2001

Alabama Office:
2224 1st Avenue North
Birmingham, Alabama 35203
Telephone: 205-326-3336
Facsimile: 205-326-3332

On Feb 20, 2012, at 7:25 PM, "Joel Voelzke" <joel@voelzke.com> wrote:

Maureen,

Are you going to be able to send the draft agreement to me this evening?

- Joel
Joel Voelzke

From: Maureen Abbey [maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 6:06 PM
To: Joel Voelzke
Cc: John W. Olivo Jr.; Jackie Knapp Burt
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Joel,

My client has agreed to the terms per my revisions to your word document, to which you agreed, and further with the understanding that the Cloudvue systems would include InsightServer and/or any Smartvue cloud system for remote video surveillance and management.

I will have a draft to circulate for you later, as it is taking a bit longer to work these terms into the template.

Thanks,
Maureen

From: Joel Voelzke [mailto:joel@voelzke.com]
Sent: Monday, February 20, 2012 7:59 PM
To: Maureen Abbey
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Maureen,

If I receive the agreement from you, either executed by your client or if you advise me that your client has agreed to the terms, and nothing jumps out at me as being contrary to our understanding, then I will consider that we have a settlement agreement in place, and that any minor differences will be resolved by the parties within the spirit and framework of the agreement made.

With that understanding in place, then Smartvue will not attend the deposition tomorrow. But I'd like to review what you send to me to be sure. Can you get that to me within the next 30 minutes? Otherwise I'm going out for awhile.

- Joel

From: Maureen Abbey [mailto:maureen@hgdlawfirm.com]
Sent: Monday, February 20, 2012 4:41 PM
To: Joel Voelzke
Cc: Jackie Knapp Burt
Subject: Re: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Yes. I will send it to you shortly. In light of this agreement, please confirm whether you still intend to be present at the deposition tomorrow. It doesn't seem necessary for your client in light of this agreement.

Best regards,

Maureen V. Abbey
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 10-1909 DOC (RNBx)                                      Date: May 18, 2012

Title: JOAO CONTROL & MONITORING SYSTEMS, LLC v. ACTI CORPORATION INC.,
et al.

______________________________
THE HONORABLE DAVID O. CARTER, JUDGE

Julie Barrera
Courtroom Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:       ATTORNEYS PRESENT FOR DEFENDANT:

None Present                        None Present

PROCEDINGS: (IN CHAMBERS): ORDER (1) GRANTING DEFENDANT
SMARTVUE’S MOTION TO DISMISS
BASED ON SETTLEMENT; AND (2)
GRANTING DEFENDANT XANBOO’S
MOTION TO AMEND

Before the Court are two Motions: (1) a Motion to Dismiss Based on Settlement
Agreement (Dkt. 266) filed by Defendant Smartvue; and (2) a Motion for Leave to File a
Supplemental Answer (Dkt. 268) filed by Defendant Xanboo. The Court finds these

I. Defendant Smartvue’s Motion to Dismiss Based on Settlement

The gravamen of Defendant Smartvue’s Motion is that it and Plaintiff Joao
Control Monitoring Systems, LLC (“Plaintiff”) settled all the claims against Defendant
Smartvue on February 20, 2012, the day before the scheduled deposition of Plaintiff’s
principal and sole member, Raymond A. Joao.

a. Statement of Facts

Defendant Smartvue provides the following relevant emails from February 20,
2012, the existence of which Plaintiff does not dispute.\(^1\) In addition, Plaintiff provides

\(^1\) Out of respect for both parties’ attorneys, the Court has substituted the letter M for the
name of Plaintiff’s Attorney and the letter J for the name of Defendant Smartvue’s
emails from before and after February 20, 2012. The Court highlights the sentences that are especially important.

i. 1:12 p.m. email from J to M

From: [J] [email address]
Sent: Monday, February 20, 2012 1:12 PM
To: [M]
Subject: RE: Smartvue’s Amended Supplemental Rule 30(b)(6) Deposition Notice

[M],

My client is tied up in a meeting so I’m awaiting approval by him, but here’s what I believe he will agree to [attached] [sic]. If this is agreeable to your client, then please formalize these terms into your template settlement agreement. We can tweak them if need be after I hear back from my client.

- [J]

ii. 2:05 p.m. email from J to M

From: [J] [email address]
Sent: Monday, February 20, 2012 2:05 PM
To: [M]
Subject: RE: Smartvue’s Amended Supplemental Rule 30(b)(6) Deposition Notice

[M],

My client has approved the major settlement term sheet that I sent to you. I await Joao’s response.

- [J]

iii. 2:17 p.m. email from M to J

attorney. In addition, the Court has redacted contact information and names of people cc’d on these emails.
From: [M] [email address]
Sent: Monday, February 20, 2012 2:17 PM
To: [J]
Cc: []
Subject: RE: Smartvue’s Amended Supplemental Rule 30(b)(6) Deposition Notice

[J],

I made one minor edit to clarify that we are talking about JCMS and not Ray Joao. Also, Plaintiff requests that Smartvue withdraw its RFAs.

Please confirm your agreement to these edits, and I will prepare the template agreement with this additional provisions.

Regards,
[M]

Attached to the 2:17 email was a document containing seven paragraphs which describe what the parties “will” do, such as “Dismissal of the case against Smartvue. Mutual releases.” The document is titled “Draft Major Terms of Settlement Between Joao Control & Monitoring Systems, LLC (“JCMS”) and Smartvue.”

iv. 2:48 p.m. email from J to M

From: [J] [email address]
Sent: Monday, February 20, 2012 2:48 PM
To: [M]
Cc: []
Subject: RE: Smartvue’s Amended Supplemental Rule 30(b)(6) Deposition Notice

[M],

Agreed and accepted.

Just to be sure that we’re on the same page, I understand that the provision about Smartvue withdrawing its RFAs will be a term of the settlement rather than a condition precedent.
Please prepare the formal agreement for signature. I will add the signator’s name and title for Smartvue.

- [J]

v. 4:41 p.m. email from M to J

From: [M] [email address]
Sent: Monday, February 20, 2012 4:41 PM
To: [J]
Cc: []
Subject: Re: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

Yes. I will send it to you shortly. In light of this agreement, please confirm whether you still intend to be present at the deposition tomorrow. It doesn't seem necessary for your client in light of this agreement.

Best regards,
[M]

vi. 6:06 p.m. email from M to J

From: [M] [email address]
Sent: Monday, February 20, 2012 6:06 PM
To: [J]
Cc: [ ]; []
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

[J],

My client has agreed to the terms per my revisions to your word document, to which you agreed, and further with the understanding that the Cloudvue systems would include InsightServer and/or any Smartvue cloud system for remote video surveillance and management.

I will have a draft to circulate for you later, as it is taking a bit longer to work these terms into the template.
Thanks,
[M]

vii. 7:59 p.m. email from J to M

From: [J] [email address]
Sent: Monday, February 20, 2012 7:59 PM
To: [M]
Subject: RE: Smartvue's Amended Supplemental Rule 30(b)(6) Deposition Notice

[M],

If I receive the agreement from you, either executed by your client or if you advise me that your client has agreed to the terms, and nothing jumps out at me as being contrary to our understanding, then I will consider that we have a settlement agreement in place, and that any minor differences will be resolved by the parties within the spirit and framework of the agreement made.

With that understanding in place, then Smartvue will not attend the deposition tomorrow. But I’d like to review what you send to me to be sure. Can you get that to me within the next 30 minutes? Otherwise I’m going out for awhile.

- [J]

viii. Subsequent discussions between the parties

At 11:24 p.m., Plaintiff’s attorney sent a formal, more detailed settlement agreement that Defendant Smartvue contends is inconsistent with the terms to which the parties agreed via email.

On March 2, 2012, Defendant Smartvue’s attorney responded to the 11:24 email with an attached document and the statement “Here are Smartvue’s changes.” The parties continued to edit the formal agreement and dispute its scope.

ix. Plaintiff’s principal did not appear for his deposition
As per the 4:41 email, in which Plaintiff’s attorney stated that “the deposition tomorrow . . . . doesn’t seem necessary for your client in light of this agreement,” Plaintiff’s principal did not appear for his deposition on February 21, 2012.

b. Legal Standard for motion to dismiss based on settlement

It is “well settled” that courts have “inherent power summarily to enforce a settlement agreement with respect to an action pending before it.” Dacanay v. Mendoza, 573 F.2d 1075, 1078 (9th Cir. 1978). This authority to enter a judgment enforcing a settlement agreement “has as its foundation the policy favoring the amicable adjustment of disputes and the concomitant avoidance of costly and time consuming litigation.” Id.

Because this Court sits in California, the “construction and enforcement of settlement agreements are governed by” California laws which “apply to interpretation of contracts generally.” United Commercial Ins. Servs., Inc. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir. 1992) (“The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally. . . . This is true even though the underlying cause of action is federal.”).

The parties are entitled to an evidentiary hearing if “material facts concerning the existence or terms of an agreement to settle are in dispute.” Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987). Here, however, the parties do not dispute the existence of any facts, only the legal conclusion that these facts show a settlement agreement. Accordingly, the Court does not require an evidentiary hearing to enforce this settlement agreement.

c. The email exchanges between Plaintiff’s and Defendant Smartvue’s attorneys demonstrate the formation of a settlement contract

The Court is not persuaded by Plaintiff’s three arguments against Defendant Smartvue’s Motion to Dismiss Based on Settlement Agreement (Dkt. 266). The Court first reviews the California law of contract formation and concludes that a contract was formed by the 2:48 email. Then, the Court analyzes Plaintiff’s arguments that no settlement agreement was reached because: (1) prior to the purported settlement agreement, the email exchange between the parties’ counsel manifested only an intent to write a formal contract in the future; (2) after the purported settlement agreement was reached, statements made by Defendant Smartvue’s attorney and principal suggest that no
settled existed; or (3) at the time the purported settlement agreement was reached, Plaintiff’s attorney was somehow not able to bind her client.

i. The emails from 1:12 to 2:48 p.m. establish a the formation of a settlement contract under California law

Under California law, an “essential element of any contract” is the “consent of the parties,” which requires: (1) “an offer communicated to the offeree”; and (2) “an acceptance communicated to the offeror.” Donovan v. RRL Corp., 26 Cal. 4th 261, 270-71 (2001); City of Moorpark v. Moorpark Unified Sch. Dist., 54 Cal. 3d 921, 930 (1991) (holding that no offer existed); Cal. Civ.Code, § 1550. An “offer” is the “manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” Donovan, 26 Cal. 4th at 271. The “pertinent inquiry is whether the individual to whom the communication was made had reason to believe that it was intended as an offer.” Id.

The emails show that Defendant Smartvue’s attorney sent a settlement offer (1:12 and 2:05 emails) to which Plaintiff’s attorney sent a counteroffer (2:17 email). That counteroffer contained two changes: (1) the substitution of the Plaintiff’s corporate name for the last name of its human principal; and (2) the additional term requiring Smartvue to withdraw its RFAs.

The 2:17 email was an offer because Plaintiff’s attorney manifested a willingness to enter into a bargain when she asked Defendant’s attorney to “confirm your agreement to these edits.” Defendant Smartvue’s attorney’s statement “agreed and accepted” was an acceptance of Plaintiff’s attorney’s counteroffer (2:48 email). See Marques v. Wells Fargo Home Mortg., Inc., 09-CV-1985-L RBB, 2011 WL 2005837, *3-4 (S.D. Cal. May 23, 2011) (holding that plaintiff sufficiently pled settlement agreement’s formation by alleging that defendant’s attorney sent plaintiff’s attorney an email stating that defendant “can offer the following” terms and asked plaintiff to “[l]et me know if this works and I’ll tell [defendant] to get the docs prepared,” rejecting defendant’s argument that parties conduct “merely showed that settlement negotiations were ongoing”).

Thus, as of the 2:48 email, the contract was formed.
ii. The emails manifest an intent to contract, not merely preliminary negotiations for a formal agreement

If the parties’ conduct shows “no more than an intent to further reduce the [settlement agreement] to a more formal . . . one, the failure to follow it with a more formal writing does not negate the existence of the prior . . . contract.” Elyaoudayan v. Hoffman, 104 Cal. App. 4th 1421, 1430, 129 Cal. Rptr. 2d 41, 46-47 (2003); Marques v. Wells Fargo Home Mortg., Inc., 09-CV-1985-L RBB, 2011 WL 2005837, *4 (S.D. Cal. May 23, 2011). However, there is no contract if the parties’ conduct shows that nothing was “intended to be binding until a formal written contract is executed.” Elyaoudayan, 104 Cal. App. 4th at 1430; Marques, 2011 WL 2005837, *4.

Plaintiff argues that the use of the word “Draft” in the title of the document that Defendant’s attorney sent Plaintiff’s attorney demonstrates that the parties were simply engaged in preliminary discussions. However, the Ninth Circuit has applied California law to hold that the use of preliminary-discussion terms in the title of a document does not preclude a conclusion that a contract was formed. First Nat. Mortg. Co. v. Fed. Realty Inv. Trust, 631 F.3d 1058, 1065-66 (9th Cir. 2011). In First National, the Ninth Circuit applied California law to hold that “calling something a ‘proposal,’ instead of a ‘contract’ . . ., does not necessarily mean it was not meant to be binding, especially where the circumstances suggest otherwise.” Id. at 1065. As in the present case, the discussions in First National progressed from an initial offer to a counter offer with new terms. See id. at 1065-66 (describing progression “from a ‘Counter Proposal,’ to a ‘Revised Proposal,’ to a ‘Final Proposal’”). The Ninth Circuit reasoned that this progression manifested an intent to bargain, and thus was an offer that was accepted. See id. Given the similar progression here, the Court concludes that Plaintiff’s attorney manifested a similar intent to bargain when she made a counteroffer.

Plaintiff also argues that the parties’ reference to the future creation of a “template agreement” and “formal agreement for signature” shows that no settlement contract was formed. However, it is well-established that a contract exists if the parties “have agreed . . . upon the essential terms . . ., even though a formal instrument is to be prepared and signed later.” Gavina v. Smith, 25 Cal. 2d 501, 504, 154 P.2d 681, 682-83 (1944). For

2 Indeed, it was based on this progression that the Ninth Circuit distinguished Rennick Rennick. See First National, 631 F.3d at 1065-66.
this reason, California courts and federal courts applying California law regularly enforce settlement agreements that contemplate the writing of a future, formal agreement, even if that formal agreement is never finalized. See, e.g., Facebook, Inc. v. Pac. Nw. Software, Inc., 640 F.3d 1034, 1037-38 (9th Cir. 2011) (enforcing settlement agreement under California law); Elyoudayan v. Hoffman, 104 Cal. App. 4th 1421, 1430, 129 Cal. Rptr. 2d 41, 46-47 (2003).

Plaintiff relies on Renwick v. O.P.T.I.O.N. Care, Inc., but that case is distinguishable in that there the parties explicitly stated that they would not be bound by their discussions and no party stated that it “agreed” to any terms. See 77 F.3d 309 (9th Cir. 1996). In Renwick, the Ninth Circuit held that no contract was formed by a handshake at the end of a multi-party meeting where no lawyers were present because the written agenda circulated before the meeting stated that the meeting’s purpose was to “formulate terms of a proposed initial agreement . . . for Board approval of all parties,” indicating that no binding agreement could be made at the meeting. Id. at 311, 313. Furthermore, a party’s signature on a “letter of intent” circulated after the meeting did not form a contract because it expressly stated that “this letter of intent has no binding effect on any party hereto.” Id. at 313. As the Ninth Circuit explained, the “letter of intent said, in effect, ‘this is what we did at our meeting – we agreed to negotiate further, and agreed that we had no contract unless and until we put it in writing and our boards of directors approved it.’” Id. at 314.

Renwick bears no resemblance to this case. Unlike in Renwick, the settlement here was negotiated with counsel. Unlike in Renwick, Plaintiff’s attorney sent Defendant’s attorney a document with changes and expressly asked Defendant’s attorney to “confirm your agreement to these edits.” Unlike in Renwick, Plaintiff’s attorney never indicated prior to sending this document that the terms were not binding. Unlike in Renwick, Defendant Smartvue’s attorney did not merely respond with a handshake, but instead sent an unequivocal 2:48 email: “agreed and accepted.”

Thus, the Court rejects Plaintiff’s argument that the parties did not form a contract but rather were in preliminary negotiations.3

---

3 Plaintiff argues in a single paragraph and without authority that one of the seven terms in the document attached to the 2:17 email was too vague to adequately describe the products covered by the settlement agreement, and thus no contract was formed.
iii. Subsequent statement by the parties’ attorneys and principals do not disprove the existence of the contract

Plaintiff argues that statements made by the parties after the 2:48 email show that no settlement was formed by that 2:48 email. However, these statements merely reflect Defendant Smartvue’s continued efforts to formalize the settlement agreement that already existed.

The “mere fact” that the party’s conduct at the time of the settlement showed an “anticipation of a possible future repudiation . . . is not a valid basis for concluding that the contract is not presently binding and effective.” Frankel v. Bd. of Dental Examiners, 46 Cal. App. 4th 534, 549-50, 54 Cal. Rptr. 2d 128, 137 (1996) (enforcing settlement agreement). Because a “formal instrument may be . . . better designed to prevent misunderstanding than the other writings” that constitute the contract, parties’ desires to formalize the contract do not negate the contact’s existence. Gavina v. Smith, 25 Cal. 2d 501, 504, 154 P.2d 681, 682-83 (1944); Mitchell v. Exhibition Foods, Inc., 184 Cal. App. 3d 1033, 1048, 229 Cal. Rptr. 535, 545 (1986) (“The fact that this contract was not formalized in a writing signed by both sides has no bearing on the existence or validity of that contract.”). Defendant Smartvue’s 7:59 email merely reflects the desire for the formalization of the settlement reached in the 2:48 email, a prescient concern given Plaintiff’s later repudiation of this settlement agreement after obtaining from Defendant Smartvue the concession that it would not depose Plaintiff’s principle.

Furthermore, within hours of the 2:48 email, Plaintiff’s attorney repeatedly stated that the parties had reached “an agreement.” Plaintiff’s attorney stated twice in the 4:41

However, the mere omission of an “important term that affects the value of the bargain” does not mean that a settlement agreement was not formed, “so long as the terms it does include are sufficiently definite for a court to determine whether a breach has occurred, order specific performance or award damages.” Facebook, Inc. v. Pac. Nw. Software, Inc., 640 F.3d 1034, 1037-38 (9th Cir. 2011) (enforcing settlement agreement under California law). Here, the disputed term describes the products subject to the settlement agreement. Simply because this description, which is in one of seven terms, may be susceptible to multiple interpretations does not mean that the description is so vague as to show that no contract was formed.
email that the deposition of Plaintiff’s principal, which was scheduled for the next day, “doesn’t seem necessary for your client in light of this agreement.” In addition, in the 6:06 email, Plaintiff’s counsel reiterated that “[m]y client has agreed to the terms per my revisions to your word document, to which you agreed.”

Thus, the Court rejects Plaintiff’s argument that subsequent discussions indicated that the parties did not form a contract.

iv. Plaintiff has failed to show that its counsel could not bind it

Given that this Court has concluded that a settlement agreement existed as of the 2:48 email, Plaintiff alternatively argues that Plaintiff’s attorney was somehow not able to bind Plaintiff. Plaintiff bears the burden to show that its attorney lacked authority to settle. *Anand v. California Dept. of Developmental Services*, 626 F. Supp. 2d 1061, 1067 (E.D. Cal. 2009).

Plaintiff’s inchoate argument consists of the unsubstantiated statement that, as of the 2:17 email, “Plaintiff had neither reviewed nor approved the proposed terms of settlement.” See Opp’n at 9:20-24. First, this statement is irrelevant because Plaintiff’s knowledge a full half hour before the settlement existed says nothing about Plaintiff’s attorney’s authority to bind Plaintiff in that settlement. Second, the statement is made in Plaintiff’s Opposition brief and is followed by the naked citation “Declaration of Raymond A. Joao paragraph ___);” the Joao Declaration in fact says no such thing. See Decl. Joao (Dkt. 275-3). Thus, Plaintiff has presented absolutely no evidence suggesting that its attorney could not bind it. *See Ellerd v. County of Los Angeles*, 273 F. App’x 669, 670 (9th Cir. 2008) (applying California law to reject party’s argument that “she is not bound by the Terms of Settlement because she did not personally sign it, only her attorney did” because opponent offered “evidence from which an inference can be drawn that [party’s] lawyer had the express authority to settle the case on her behalf,” whereas party only “presented a declaration stating that she did not agree to the settlement” and “[c]onspiciously missing is any statement to the effect that her lawyer was not authorized to act on her behalf”).

Furthermore, even if Plaintiff had presented evidence that its attorney lacked authority to settle as of the 2:48 email, Plaintiff “must reckon with the elementary rule of agency law that a principal is not allowed to ratify the unauthorized acts of an agent to
the extent that they are beneficial, and disavow them to the extent that they are damaging.” Navrides v. Zurich Ins. Co., 5 Cal. 3d 698, 704, 488 P.2d 637, 641 (1971). Here, Plaintiff has presented no evidence to contradict its attorney’s clear statement in her 6:06 email that “[m]y client has agreed to the terms per my revisions to your word document, to which you agreed.” This statement alone demonstrates ratification. Yet there is more; Plaintiff’s ratification is also shown by its principal’s non-appearance for the deposition scheduled for the day after the settlement agreement was reached. Plaintiff’s attorney’s 4:41 email expressly requests that Defendant SMARTvue forego the deposition “[i]n light of this agreement.” Given that Defendant has presented undisputed evidence that Plaintiff both agreed to the settlement and took advantage of this agreement to forego its deposition, Plaintiff fully ratified the settlement reached by its attorney. See Navrides Co., 5 Cal. 3d at 704 (holding that party ratified unauthorized settlement forged by her attorney, and thus was bound by it, when party sued for money in the amount of that the unauthorized settlement provided to her).

d. Conclusion

In sum, the Court concludes that a valid settlement agreement exists between the parties. Because this settlement agreement requires “Dismissal of the case against SMARTvue,” this Court exercises its inherent authority and GRANTS Defendant SMARTvue’s Motion to Dismiss Based on Settlement. Thus, this Court DISMISSES WITH PREJUDICE as to Defendant SMARTvue.

II. Defendant Xanboo’s Motion for Leave to File a Supplemental Answer

The Court is not persuaded by either of Plaintiff’s two arguments against Defendant Xanboo’s Motion for Leave to File a Supplemental Answer (Dkt. 268). Plaintiff argues that Defendant Xanboo fails to show: (1) good cause for amendment; or (2) that a settlement agreement actually occurred.

i. Good cause exists to amend Defendant Xanboo’s pleadings

Where, as here, a court provided a “pretrial scheduling order that established a timetable for amending the pleadings” and that deadline has “expired,” the ability to amend is evaluated under the stricter Federal Rule of Civil Procedure 16 rather than the more liberal Rule 15. Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000);
see also April 19, 2011 Order (Dk. 165) at 2:1 (setting deadline to amend the pleadings as “within sixty (60) days of the date of this Order”).

Rule 16 requires a party to satisfy the requirements of Rule 15, as well as show “good cause” for its delay in seeking leave to amend. See Fed. R. Civ. P. 16(b)(4) (“a schedule may be modified only for good cause and with the judge’s consent”); Coleman, 232 F.3d at 1294.

Rule 15(d) provides that a “court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” See Fed. R. Civ. P. 15(d). “Rule 15(d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit.” Griffin v. County Sch. Bd. of Prince Edward County, 377 U.S. 218, 227, 84 S. Ct. 1226, 1231, 12 L. Ed. 2d 256 (1964); see also Ralph W. Keth, et al. v. John A. Volep, et al., 858 F.2d 467, 476 (9th Cir. 1987).

Plaintiff argues that amendment is without good cause. However, Defendant Xanboo’s Motion and the allegations in the proposed amended pleading indicate that Defendant Xanboo’s amendment is for good cause under Rule 16 and Rule 15 because the settlement that is the basis for the amendment took place after the Court’s deadline for amendment. See Mot. Ex. 11 (Dkt. 268-2) at 11-50 (“On February 20, 2012, the parties reached an agreement to settle this case.”).

ii. Plaintiff’s fact dispute does not show futility of amendment

“[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.” Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). The test for futility is the same as a 12(b)(6) motion to dismiss. Id.

Defendant Xanboo’s proposed pleading more than adequately alleges that a settlement agreement was reached by the parties. The proposed pleading alleges that “[o]n February 20, 2012, the parties reached an agreement to settle this case” and lists some of the “terms of the settlement agreement.” See Mot. Ex. 11 (Dkt. 268-2) at 11-50. The proposed pleading also attaches an exhibit that shows that Plaintiff’s attorney responded by email with the word “agreed” to an email from Defendant Xanboo’s attorney stating “I am writing to confirm that Xanboo, Inc., and Joao Control &
MONITORING SYSTEMS, LLC ("JCMS") have reached an agreement in principle to settle their pending patent infringement litigation” and then lists the terms of that agreement. See Mot. Ex. 11 (Dkt. 268-2) at 11-58-59; Marques v. Wells Fargo Home Mortg., Inc., 09-CV-1985-L RBB, 2011 WL 2005837, *3-4 (S.D. Cal. May 23, 2011) (holding that plaintiff sufficiently pled settlement agreement’s formation by alleging that defendant’s attorney sent plaintiff’s attorney an email stating that defendant “can offer the following” terms and asked plaintiff to “[l]et me know if this works and I’ll tell [defendant] to get the docs prepared,” rejecting defendant’s argument that parties conduct “merely showed that settlement negotiations were ongoing”).

Plaintiff baldly argues that amendment is futile, but fails to engage with the actual text of the pleadings and cites no supporting authority. See Opp’n at 21-22. Plaintiff does, however, recite several “facts” outside the proposed pleadings regarding the purportedly bad health of Plaintiff’s principal, the ability of Plaintiff’s attorney to bind Plaintiff, and Plaintiff’s settlement with other Defendants in this case. The Ninth Circuit has rejected a virtually identical argument, holding instead that a district court abused its discretion when it refused to allow the defendant to amend its pleadings to assert that the parties had settled the case. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). The Ninth Circuit reasoned that the amendment was not futile because the plaintiff’s opposition presented only “[q]uestions of fact,” but did not challenge the legal sufficiency of the pleading. Id.; see also Asarco LLC v. Shore Terminals LLC, No. C 11-2384, 2012 WL 440519, *2 (N.D. Cal. Feb. 10, 2012) (applying Miller in light of the revised Rule 12(b)(6) standard set forth in Ashcroft v. Iqbal, 556, U.S. 662 (2009)).

Accordingly, the Court GRANTS Defendant Xanboo’s Motion for Leave to File a Supplemental Answer (Dkt. 268).

IV. Disposition

For the reasons stated above, the Court:

1. GRANTS Defendant Smartvue’s Motion to Dismiss Based on Settlement and DISMISSES WITH PREJUDICE as to Defendant Smartvue (Dkt. 266).

2. GRANTS Defendant Xanboo’s Motion for Leave to File a Supplemental Answer (Dkt. 268).
The Clerk shall serve this minute order on all parties to the action.