IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| THERMOLIFE INTERNATIONAL, LLC, | ) | |
| | ) | |
| Plaintiff, | ) | Civil Action No. 15-273 |
| | ) | Judge Arthur J. Schwab |
| vs. | ) | Chief Magistrate Judge Maureen P. Kelly |
| | ) | |
| D.P.S. NUTRITION, INC., TRIBRAVUS ENTERPRISES, LLC, A1 SUPPLEMENTS, INC., MUSCLE AND STRENGTH, LLC, SUPPZ INC., SUPPLEMENT DIRECT VENTURES, INC. | ) | Re: ECF No. 86 |
| | ) | |
| Defendants. | ) | |

**MEMORANDUM ORDER**

Pending before the Court is Plaintiff ThermoLife International, LLC and Counterclaim Defendant Ron Kramer's Motion to Enforce Settlement and for Sanctions. ECF No. 86. After review of the instant Motion and the related filings, and a conference call with counsel on October 9, 2015, ECF No. 106, the Motion to Enforce Settlement will be GRANTED and the Motion for Sanctions will be GRANTED IN PART and DENIED IN PART.

## I. PROCEDURAL HISTORY

Plaintiff ThermoLife International, LLC ("Plaintiff" or "ThermoLife") initiated this action by filing a Complaint For Patent Infringement on February 26, 2015, alleging five causes of action for direct and indirect infringements by Tribravus Enterprises, LLC, dba iForce Nutrition ("iForce"), and the other named defendants. ECF No. 1.

ThermoLife is a limited liability company organized under the laws of the State of Arizona with a principal place of business in Venice, California. ECF No. 1, ¶ 1. Defendant iForce is a corporation organized under the laws of the State of Arizona with a principal place of business in Vista, California. ECF No. 38, p. 29. Defendant DPS Nutrition, Inc. is a

Pennsylvania corporation with a principal place of business in Taylor, Pennsylvania. ECF No. 1, ¶ 5.

On July 8, 2015, the parties filed a Stipulation Selecting ADR Process. ECF No. 52. The parties selected the ADR process of mediation and designated Attorney David G. Oberdick as the mediator. The Stipulation provided that Ron Kramer ("Kramer"), President of ThermoLife, and Davis Nelson ("Nelson"), President of iForce, would be attending the mediation, which was scheduled for September 3, 2015. Id.

A Case Management Conference was conducted on July 13, 2015. ECF No. 53. At the conclusion of the conference, United States District Judge Arthur J. Schwab issued an Order Referring Case to Alternative Dispute Resolution in the form of mediation with Attorney David Oberdick. ECF No. 55.

The mediation was conducted by Attorney Oberdick on September 3, 2015, at the law offices of Meyer, Unkovic & Scott LLP in Pittsburgh. The mediation commenced at 9:00 a.m. In attendance at the mediation were Mr. Kramer, as President of Plaintiff ThermoLife, and Attorneys Kirsten Rydstrom and Kalman Magyar, counsel for ThermoLife. iForce and all other defendants were represented at the mediation by Mr. Nelson, as the President of iForce, and Attorney Andrew Dallmann. ECF No. 88, p. 3. Attorney Dallmann appears from the record to serve as lead counsel and/or national counsel for iForce, located in Irvine, California. ECF No. 99, p. 2.

During the mediation, Mr. Kramer and Attorneys Rydstrom and Magyar were in one conference room. Mr. Nelson and Attorney Dallman were in another conference room. Throughout the day, Mediator Oberdick shuttled back and forth between the two rooms. ECF No. 88-2, ¶ 5.

At approximately 4:00 p.m., after ThermoLife and Mr. Kramer had accepted iForce and Mr. Nelson's final counter-offer, Mediator Oberdick met with all counsel, recited and confirmed the settlement terms one by one. ECF No. 88, pp. 3-4. Because Mr. Nelson and Attorney Dallmann had a flight to catch to the West Coast at approximately 6:00 p.m., counsel for the parties and Mediator Oberdick agreed that, in lieu of signing a formal term sheet at that time, Mediator Oberdick would send an email confirming the terms of the settlement. Id. at p. 4.

Immediately after the conclusion of the mediation, at 4:38 p.m. on September 3, 2015, Mediator Oberdick sent an email to all counsel confirming the terms of the settlement. The email stated that:

> As we discussed, I am writing to outline my understanding of the settlement terms that have been agreed to in principle amount your clients in the above matter, which I will refer to herein as Thermolife (plaintiff) and iForce (for all defendants). The terms have three primary components – (1) monetary, (2) sell-thru, and (3) cessation of manufacture/ reformulation – along with related understandings as to the manner in which the settlement will be presented to and monitored by the Court. The components and the procedural understandings are discussed below.
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> 1. Monetary – iForce will pay to Thermolife the total sum of $110,000, with $30,000 payable at the time of settlement execution, another $30,000 payable 30 days after the date of execution, another $30,000 payable 60 days after the date of execution, and a final $20,000 payable 90 days after the date of execution.
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> 2. iForce has a 90 ninety "sell-thru" period as to the alleged infringing product/ formulation. More specifically, at the end of this "sell thru" period, iForce will cease marketing (via website or otherwise) and selling the alleged infringing product/ formulation. iForce's distributors and retailers will then have an additional 90 ninety days within to sell the alleged infringing product. Thermolife will have the ability to validate compliance of this sell-thru through either (i) inspection by counsel of Thermolife under an attorney's eyes only review, or (2) independent third party certification.
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> 3. iForce will immediately cease any continued manufacture of the alleged infringing product/formulation, but can sell the product with a new formulation outside the scope of the patent claims at issue.

> The settlement will provide for continuing jurisdiction by the Court through the payment and sell-thru periods, but will be presented so that the Court can note the case as administratively closed. More specifically, a stipulation of dismissal with prejudice (covering all claims and counterclaims as to all parties) will be presented as early as the time of receipt of the first settlement payment, but with a provision as to continuing jurisdiction as noted above. Consistent with the stipulation of dismissal, the agreement will include mutual releases as to asserted claims.
>
> Please confirm that this is accurate with your understanding and let me know if you have any questions.
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> I will inform the Court clerk that a settlement in principle has been reached and ask what is needed to allow for a stay of current court dates and deadlines.

ECF No. 88-3.

On the evening of the mediation, Attorney Magyar responded to Mediator Oberdick's email confirming the accurate recitation of the settlement terms and stating that he would send out a settlement agreement. Attorney Dallmann was copied on the email. ECF No. 88-4.

The following day, September 4, 2015, Mediator Oberdick emailed all counsel at 10:36 a.m. informing counsel that he had notified the Court of the settlement as agreed at the conclusion of the mediation. Specifically, Mediator Oberdick indicated that:

> I spoke with the Court clerk this morning and advised that a settlement had been reached in principle. I did not share the terms. I explained that some prehearing dates are upcoming and that the parties would like to push those dates off while they work to finalize the settlement. I received a call back from the clerk who indicated that the Court would like a motion requesting a limited stay in view of settlement prep/execution – and that the motion identify a definitive and short period for when dates would resume if needed (that is, a substitute and revised schedule).
>
> You may also want to consider including a date by which counsel will report to the Court on status.
>
> Let me know if you need any further help in coordinating with the Court.

ECF No. 88-5.

It is undisputed that between September 4, 2015 and September 8, 2015, neither iForce nor Attorney Dallman, its counsel, ever responded to or contested the email of Mediator Oberdick confirming the settlement terms, the email of Attorney Magyar confirming the settlement terms or Mediator Oberdick's email advising that he had notified the Court of the settlement. ECF No. 88, p. 6.

On September 8, 2015, at 8:28 a.m., five days after the mediation, Attorney Magyar wrote to Attorney Dallman and provided him with the draft settlement agreement reflecting the terms of the settlement negotiated by Mediator Oberdick. ECF No. 88-6. At 11:55 a.m. that same day, Attorney Rydstrom sent an email to Attorney Dallmann and attached a draft of the motion to stay the case as requested by Judge Schwab. In the email, Attorney Rydstrom asked defense counsel to advise her by 3:00 p.m. if she could use his electronic signature because Judge Schwab had directed that the motion be filed with the Court the next day. ECF No. 88-7. When no responses were received, Attorney Rydstrom sent a follow-up email to defense counsel at 3:47 p.m. that same day again asking for consent to file the Court requested motion to stay. ECF No. 88-8.

At 4:13 p.m. on September 8, 2015, Attorney Dallman sent an email to Mediator Oberdick denying the existence of a settlement:

> Dear Mr. Oberdick:
>
> Thank you for your efforts last week. While the terms set forth below were discussed among counsel at the end of the settlement, Dave Nelson of iForce was not present during these 11th hour settlement discussions. Specifically, the provision that "Thermolife will have the ability to validate compliance of this sell-thru through either (i) inspection by counsel of Thermolife under an attorney's eyes only review, or (2) independent third party certification" was not raised with Mr. Nelson but was only raised with me at the very end of the day as Mr. Nelson and I were about to leave for the airport. Accordingly, iForce does not agree to the settlement terms set forth below and intends to move forward with the case.

> Please advise the Court that your notice of a settlement in principle was premature. With that said, we understand that Thermolife has a pending deadline for its infringement contentions. Defendants will agree (formally or informally) to a one week extension of this deadline.

ECF No. 88-9.

Attorney Magyar immediately wrote to Attorney Dallmann seeking clarification of his client's position. ECF No. 88-10. Similarly, within minutes, Mediator Oberdick wrote to Dallmann, asking Dallmann to call him. ECF No. 88-11. In response, iForce's counsel made repeated representations that they would get back to counsel for ThermoLife and Mr. Kramer to address the settlement terms, which ThermoLife contends never occurred. ECF No. 88-2, ¶¶ 20-21; ECF No. 88-13, ¶ 17. Finally, on October 1, 2015, local counsel for iForce and the other defendants, Ansley Westbrook II, left Attorney Rydstrom a voicemail simply reiterating: "We do not have a settlement." ECF No. 88-13, ¶ 18.

## II. MOTION TO ENFORCE SETTLEMENT AND FOR SANCTIONS

On October 2, 2015, the day after the above-described voicemail message from iForce's local counsel denying the existence of a settlement, ThermoLife filed the instant Motion to Enforce Settlement and for Sanctions and Brief in Support. ECF Nos. 86 and 88. ThermoLife asserts that after a full day of the Court-ordered mediation, Defendant iForce and all other Defendants entered into a comprehensive, final settlement agreement with ThermoLife and Mr. Kramer resolving the entire litigation. ThermoLife argues:

> Despite iForce's contrived protestations, there is no doubt - ***as evidenced by the mediator's own writings*** – that by the end of the September 3rd mediation session, the parties had entered into a settlement agreement. At the conclusion thereof, counsel for all of the parties even shook hands, confirming that they had an agreement. Less than an hour later, the mediator, respected Pittsburgh attorney David G. Oberdick of Meyer, Unkovic & Scott LLP, sent an e-mail to counsel for all parties confirming the settlement terms. He also said that he would "inform the Court clerk that a settlement in principle has been reached and ask what is needed to allow for a stay of current court dates and deadlines."

> Mr. Oberdick did as promised the next morning (September 4), reporting back to the parties: "I spoke with the Court clerk this morning and advised that ***a settlement had been reached in principle***. ... I received a call back from the clerk who indicated that the Court would like a motion requesting a limited stay in view of settlement prep/execution."
>
> Thereafter, for days, iForce and its counsel remained silent. Only after five days had passed – and after never responding to the mediator's e-mails, and after ThermoLife's counsel had sent iForce's counsel a draft settlement agreement (to which iForce never responded or disputed that there was a settlement) and a draft joint motion (to which iForce never responded or disputed that there was a settlement) – did iForce's counsel first state (on September 8) that iForce did not agree that a settlement had been reached and that it intended "to move forward with the case."

ECF No. 88, p. 2.

iForce opposes the Motion to Enforce Settlement and for Sanctions. iForce contends that there is no binding settlement agreement for the Court to enforce and that the purported "hand-shake" settlement is not enforceable. ECF No. 105.

## III. MOTION REFERRAL AND TELEPHONE CONFERENCE

The pending Motion for Sanctions was internally referred to the undersigned, as a member of the Case Management and ADR Committee, for adjudication in accordance with Section 2.4 of the ADR Policies and Procedures of the United States District Court for the Western District of Pennsylvania. ECF: 10/5/15 Text Order.

Following the referral, this Court scheduled a telephone conference relative to the Motion for Sanctions. ECF No. 103. The telephone conference was conducted by the Court with all counsel on October 9, 2015. During the conference, the Court reviewed the chronology of facts leading up to, during and after the mediation. The Court also offered to schedule a hearing, however, all counsel agreed that the pending Motion to Enforce Settlement and for Sanctions could be decided by the Court based on the written submissions. ECF No. 106. Leave was

granted for Defendants to file a sur-reply which was filed on October 15, 2015. ECF Nos. 109 and 110.

## IV. DISCUSSION

### A. Motion to Enforce Settlement Agreement

#### 1. Applicable Law

The United States Court of Appeals for the Third Circuit has consistently held that oral settlement agreements are enforceable. The Court of Appeals has expressly held that "[a]n agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing." Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970) (citing Good v. Pennsylvania R.R. Co., 384 F.2d 989 (3d Cir. 1967); Kelly v. Greer, 365 F.2d 669 (3d Cir. 1966); Main Line Theatres, Inc. v. Paramount, 298 F.2d 801 (3d Cir. 1962)). "Settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts." D.R. by M.R. v. East Brunswick Bd. of Educ., 109 F.3d 896, 901 (3d Cir. 1997).

As correctly argued by ThermoLife in its Brief in Support, settlement agreements reached through mediation are as binding as those reached during litigation. Standard Steel, LLC v. Buckeye Energy, Inc., 2005 WL 2403636, at *9 (W.D. Pa. Sept. 9, 2005) ("We agree that reaching a settlement agreement during mediation, rather than during litigation, does not lessen the binding nature of the agreement on the parties"). See D.R. by M.R. v. East Brunswick Bd. of Educ., 838 F. Supp. 184, 190 (D.N.J. 1993) ("The fact that this Agreement was reached during mediation does not in and of itself diminish the effect of the Agreement, or make it any less of a binding contract. To so hold would create a hierarchy of settlement agreements where some are

deemed binding while others are not determinable merely by whether they were reached during mediation or during litigation. Such a rule would create confusion and indefiniteness as to the effect of a settlement agreement. Accordingly, it may have a chilling effect on the use of such agreements as parties would never know whether the matter was finally resolved").[1]

Settlement agreements are interpreted as binding contracts. Orta v. Con-Way Transportation, 2002 WL 31262063, at *1 (E.D. Pa. Oct. 8, 2002) (citing Columbia Gas Systems, Inc. v. Enterprise Energy Corp., 50 F.3d 233, 238 (3d Cir. 1995)). Thus, settlement agreements are construed according to traditional principles of contract law. Id. See also Coltec Industries v. Hobgood, 280 F.3d 262, 269 (3d Cir. 2002) (citing In Re Cendant Corp. Prides Litig., 233 F.3d 188, 193 (3d Cir. 2000) ("[B]asic contract principles . . . apply to settlement agreements ...).

**2. Enforceability of the Alleged Settlement**

It is the position of ThermoLife that an enforceable settlement agreement was reached when ThermoLife and Mr. Kramer accepted the final counter-offer of iForce and the other defendants and counsel for all of the parties met with Mediator Oberdick and confirmed the final terms of the settlement, including validation, as he recited them one by one. It is also the position of ThermoLife and Mr. Kramer that the agreement to the stated settlement terms was further confirmed immediately thereafter when Attorney Rydstrom asked Attorney Dallmann whether the parties had a verbal agreement and asked that they shake hands on it. Attorney Dallmann not only agreed that they had an agreement but shook Attorney Rydstrom's hand. ECF No. 88, p. 4. In addition, it is undisputed that Mediator Oberdick immediately sent an email

[1] Furthermore, it is immaterial that a party ultimately refuses to sign a written settlement agreement. Suber v. Peterson, 2006 WL 1582312, at *3 (E.D. Pa. June 2, 2006) (upholding settlement where party authorized counsel to settle claims but changed mind after settlement reached).

to all counsel confirming the terms of the agreement and notified the Court of the settlement the next morning. ECF No. 88-3.

In opposing the Motion to Enforce Settlement, iForce takes the position that it never agreed to a settlement. In support of its position, iForce argues that it had not reached an agreement on terms; that the alleged settlement was never reduced to writing during the mediation; and that no writing was ever signed. ECF No. 105, p. 1. It also denies that it agreed to validation. iForce further claims that the "hand shake deal" was a "handshake" merely confirming an understanding of the terms of ThermoLife and Kramer's last settlement offer. Id. at p. 3. iForce also argues that Attorney Dallmann had no authority to accept or reject any settlement offer. Id.

In light of the positions of ThermoLife and iForce, the fundamental question to be resolved by this Court is whether the parties reached a legally enforceable settlement agreement at the conclusion of the mediation. This Court has thoroughly reviewed the record related to the mediation and the instant Motion for Sanctions, including: ThermoLife and Kramer's Brief in Support and Reply Brief, ECF Nos. 86, 88, 96 and 104, iForce's Brief in Opposition and Sur-Reply Brief in Opposition, ECF Nos. 99, 105, 110 and 111, as well as all accompanying affidavits. This Court has also considered the arguments made by the parties during the telephone conference with this Court. ECF No. 106. Following this detailed review, it is clear that the parties did come to a settlement agreement at the conclusion of the mediation with Mediator Oberdick on September 3, 2015. It is also clear that following the settlement agreement, Mediator Oberdick reviewed and confirmed the terms one by one with counsel for the parties. Immediately thereafter he documented each of those terms in an email to counsel for

the parties, thereby memorializing the settlement agreement of the parties. These settlement terms are sufficiently definite to be enforced.

This Court rejects iForce's contention that it had not reached an agreement on the terms of a settlement. Mr. Nelson was present throughout the entire mediation. Mediator Oberdick clearly took all appropriate action in reviewing each term one by one with counsel for the parties, immediately documenting the settlement terms in the email and notifying Judge Schwab's chambers regarding the settlement the following morning.

The Court finds that iForce's denial of the significance of the handshake at the conclusion of the mediation to be implausible at best. Immediately following the recitation of all of the settlement terms, including validation, by Mediator Oberdick, Attorney Rydstrom requested that Attorney Dallmann shake hands to confirm that they had a settlement agreement. He agreed and shook hands. For Attorney Dallmann to now claim that the handshake "merely confirmed" the understanding of the terms of ThermoLife's proposed settlement offer is contrary to the evidence and contrary to the custom and practice of what a handshake represents after the recitation of an agreement to settlement terms.

Lastly, iForce's denial of a settlement on the settlement term of validation rings hollow. The evidence indicates that at no point in the negotiation did Defendants object to the inclusion of validation. In fact, at the end of the day Attorney Dallmann necessarily confirmed that validation was included in the settlement agreement having agreed that a settlement had been reached immediately after Mediator Oberdick recited each of the settlement terms which included validation in the sell-through provision.

This Court also takes note of the fact that, after returning to California, iForce never once disputed the settlement agreement during the intervening five days despite numerous

opportunities to do so. Mediator Oberdick emailed all counsel reciting the very detailed terms of the settlement less than an hour after the mediation concluded. Attorney Dallmann did not dispute the terms or deny the settlement. Attorney Magyar responded to the Oberdick email on the night of the mediation confirming that the terms were the same terms recited at the end of the mediation. Attorney Dallmann did not respond or deny the recitation of the terms. The next morning, Mediator Oberdick contacted Judge Schwab's chambers and notified them of the settlement. He then emailed counsel reporting his notification to the Court of the settlement. Again, Attorney Dallmann did not respond, and did not deny the existence of a settlement. Nor is there any evidence that he contacted Judge Schwab's chambers to deny the reported settlement. Further, on the morning of September 8, 2015, Attorney Magyar emailed Attorney Dallmann and provided him with the draft settlement agreement. Dallmann did not respond for almost eight hours. Nor did Attorney Dallmann respond to Attorney Rydstrom's two emails regarding the Motion to Stay that Judge Schwab had requested. Simply put, only after almost five days had passed with no response from iForce and Dallmann did they end the radio silence and broadcast a denial that a settlement was ever reached. Therefore, it is clear to this Court that, following the conclusion of an emotionally charged mediation and a settlement agreement, iForce -- or more specifically, Mr. Nelson -- simply changed his mind relative to settlement.

Furthermore, the Court finds the statements of Mediator Oberdick deserving of significant weight. Mediator Oberdick is a respected member of the Bar and an experienced neutral. As ThermoLife correctly points out, Oberdick was the individual who communicated every offer and counter-offer during the day-long mediation. As such, Mediator Oberdick had a complete understanding of the agreement of the parties. In his email immediately following the conclusion of the mediation, Oberdick stated: "As we discussed, I am writing to outline my

understanding of the settlement terms that have been agreed to in principle by your clients . . . I will inform the Court clerk that a settlement in principle has been reached . . . ." ECF No. 88-3. Mediator Oberdick's belief that the case was settled at the conclusion of the mediation is further evidenced by is email to counsel the following morning: "I spoke with the Court clerk and advised that a settlement had been reached in principle." ECF No. 88-5. Clearly, Mediator Oberdick understood that a settlement had been reached and any attempt by iForce to deny that settlement was reached is unavailing. See Destro v. Hackensack Water Co., 2013 WL 2278297, at *4 (D.N.J. May 14, 2013) ("Finally, and perhaps the most persuasive evidence, is the testimony of the neutral mediator . . . . Importantly, [the mediator] testified regarding an e- mail she sent to the parties after the Mediation . . . , which thanked the parties for 'the opportunity to assist [them] in the resolution of this matter.' [The mediator] testified that she would not have used the word 'resolution' in her e-mail had the parties not reached a settlement. Finally, [the mediator] had no reason or motive to color her testimony. She had nothing to win or lose. This Court finds her credible. [The mediator's] testimony, in conjunction with her e-mail, as well as the logical inferences set forth above, convince this Court that a settlement was unequivocally reached at the Mediation") (internal citations omitted). See also DeHainaut v. California Univ. of Pennsylvania, 490 F. App'x 420, 423 (3d Cir. 2012) (affirming the District Court's order granting the motion to enforce the settlement which was based, in part, on the testimony of the mediator); United States v. Kavanaugh, 2012 WL 3746179, at *6 (W.D. Pa. Aug. 29, 2012) (granting the motion to enforce settlement finding that the parties entered into an enforceable settlement at the mediation which was subsequently memorialized in a letter prepared by the plaintiff); Standard Steel, LLC v. Buckeye Energy, Inc., 2005 WL 2403636, at *13 (W.D. Pa.

Sept. 29, 2005) (finding that the oral settlement agreement entered into by the parties at the mediation was enforceable).

**B. Motion for Sanctions**

Plaintiff ThermoLife and Counterclaim Defendant Kramer ask that iForce be required to pay the attorneys' fees and costs they incurred by having to file the instant Motion to Enforce Settlement arguing that iForce acted in bad faith when it declared that no settlement had been reached.

Attorneys' fees and costs are not ordinarily recoverable unless authorized by statute or specifically provided in the text of the settlement agreement. Elliot v. Marinos, 2013 WL 4400162, at *3 (W.D. Pa. Aug. 15, 2013) (citing Hobbs v. American Investors Mgmt., Inc., 576 F.2d 29, 35 n.18 (3d Cir. 1978)). There are exceptions to the general rule, however, which are "rooted in the inherent equity power of the courts and include the power to award attorneys' fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Thorner v. Sony Computer Entm't Am. LLC, 2013 WL 1145200, at *9 (D.N.J. Mar. 18, 2013). See Elliot v. Marinos, 2013 WL 4400162, at *3. See also Days Inn Worldwide, Inc. v. Sumana Hospitality, LLC, 2010 WL 1529607, at *3 (D.N.J. Apr. 15, 2010) (quoting Republic of the Philippines v. Westinghouse Elec., 43 F.3d 65, 73 (3d Cir. 1994) (emphasis in original) and Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) ("[t]his Court has the '*inherent* authority to impose sanctions upon those who would abuse the judicial process' . . . These powers derive from 'the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases'")). Mere delay is not sufficient to show bad faith nor is the mere failure to turn over settlement funds in a timely manner thus causing a plaintiff to seek enforcement of the settlement. See Elliot v. Marinos, 2013 WL 4400162, at *4.

In this case, the Court finds that iForce and Dallmann's actions in denying the settlement exceeds mere delay and evidences bad faith as well as vexatious conduct. Indeed, as already found by this Court, the record in this case leaves no doubt that the parties reached a settlement at the mediation conducted by Attorney Oberdick. Moreover, not only did Attorney Dallmann acknowledge that a settlement had been reached and shake hands with Attorney Rydstrom immediately following Mediator Oberdick's recitation of the settlement terms, but neither Dallmann nor iForce challenged Oberdick, Rydstrom or Magyar's subsequent references to "the settlement" or the fact that a settlement had been reached despite at least four opportunities to do so. Under these circumstances, iForce's belated denial that a settlement had been reached is not only vexing at best but appears to be disingenuous. The Court therefore finds that ThermoLife and Kramer are appropriately reimbursed for the attorneys' fees and costs that they incurred by having to seek enforcement the settlement that had clearly been reached.

ThermoLife and Kramer also argue that additional sanctions in the form of the costs and attorneys' fees they incurred in preparing for and attending the mediation should be awarded pursuant to Federal Rule of Civil Procedure 16(f) because iForce's behavior at the mediation and thereafter evidences a failure to comply the alternative dispute resolution process in the first instance.

Federal Rule of Civil Procedure 16 governs the pretrial management of cases by the federal courts. Rule 16 also provides for sanctions when counsel, a party or both, fail to abide by orders of the Court. The United States Court of Appeals for the Third Circuit has explained:

> *Rule 16* governs the scheduling and management of pretrial conferences. The purpose of the rule is to provide for judicial control over a case at an early stage in the proceedings. The preparation and presentation of cases is thus streamlined, making the trial process more efficient, less costly, as well as improving and facilitating the opportunities for settlement. Accordingly, *Rule 16(a)* provides that the court may, in its discretion, direct the attorneys for parties to appear

> before it for pre-trial conferences "for such purposes as . . . facilitating the settlement of the case." If a party fails to obey a scheduling or pretrial order, or fails to participate in good faith in a scheduling or pretrial conference, a judge "may make such orders with regard thereto as are just" and require the offending party "to pay reasonable expenses incurred because of noncompliance with this rule . . . unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust." *Fed. R. Civ. P. 16(f).* Thus, Rule 16 authorizes courts to require parties to attend conferences for the purpose of discussing settlement and impose sanctions if they fail to participate in good faith.
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> * * *
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> The purpose of Rule 16 is to maximize the efficiency of the court system by insisting that attorneys and clients cooperate with the court and abandon practices which unreasonably interfere with the expeditious management of cases.

Newton v. A.C. & S, 918 F. 2d 1121, 1126 (3d Cir. 1990).

Rule 16(f) provides that upon a motion, or on its own, a court may issue sanctions if a party or its attorney:

> (A) fails to appear at a scheduling or other pretrial conference;
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> (B) is substantially unprepared to participate – or does not participate in good faith – in the conference; or
>
> (C) fails to obey a scheduling or other pretrial order.

Fed. R. Civ. P. 16(f). See Tracinda Corp. v. Daimlerchrysler, AG, 502 F. 3d 212, 242 (3d Cir. 2007) (observing that whereas sanctions imposed pursuant to court's inherent authority generally require finding of bad faith, Rule 16(f) contains no such requirement).

In this case, having found that a settlement agreement was in fact reached by the parties as a result of the mediation conducted in this matter, the Court is unable to conclude that iForce and/or its counsel failed to fully participate in the actual mediation or failed to do so in good faith. Therefore, the Court will therefore deny ThermoLife and Mr. Kramer's request for attorneys' fees and costs associated with the mediation itself.

## V. CONCLUSION

For the reasons set forth herein, the Motion to Enforce Settlement is GRANTED and the Motion for Sanctions is GRANTED IN PART and DENIED IN PART. Plaintiff ThermoLife and Counterclaim Defendant Ron Kramer are awarded the attorneys' fees and costs associated with the preparation and presentation of the Motion to Enforce Settlement. As such, ThermoLife and Kramer shall file a petition to itemize and support their claim for reasonable attorneys' fees and costs, along with any supporting affidavit(s), by December 23, 2015. iForce and the co-defendants may file a response -- limited to the reasonableness of attorneys' fees and costs -- by January 5, 2016.

MAUREEN P. KELLY
CHIEF UNITED STATES MAGISTRATE JUDGE

Dated: December 15, 2015

cc: The Honorable Arthur J. Schwab
United States District Judge

All counsel of record via Cm/ECF