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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Robert Joseph Benge,  
Plaintiff,  
v.  
Charles L. Ryan, et al.,  
Defendants.

No. CV 14-00402-PHX-DGC (BSB)

**ORDER**

Plaintiff Robert Joseph Benge brought this action pursuant to 42 U.S.C. § 1983 against prison healthcare providers, including Defendants Merchant and Santo. On November 22, 2016, Merchant and Santo filed a Joint Motion to Enforce Settlement Agreement. (Doc. 204.) Plaintiff did not respond to the motion within the 14 days permitted by Local Rule of Civil Procedure 7.2(c), but, in light of Plaintiff's pro se status, the Court issued an order granting Plaintiff an additional 20 days to respond to the motion. (Doc. 205.) The Court instructed Plaintiff to specifically address the operative terms of the two written settlement agreements attached to Defendants' motion and warned Plaintiff that failure to respond could be construed as consent to the granting of the motion. (*Id.* at 1-2.) Plaintiff did not respond. The Court will grant the motion.

**I. Background**

Plaintiff's claims arose during his confinement at the Arizona State Prison Complex-Lewis, where he injured his left leg in May 2012, but did not learn until December 2012 that he had fractured his tibia. (Doc. 1.) Plaintiff alleged that Dr.

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1 Merchant and Nurse Santo, among others, did not appropriately treat his leg and, as a  
2 result, he suffered permanent injury and continuing pain. In an order dated January 5,  
3 2016, the Court granted summary judgment to all Defendants except Merchant, Santo,  
4 and Tucker.<sup>1</sup> (Doc. 150.)

5 Merchant and Santo state that on October 24, 2016 the parties, represented by their  
6 attorneys, participated in a settlement conference with Magistrate Judge Burns, but  
7 concluded the formal session after several hours without agreement. (Doc. 204, Ex. A,  
8 Stuart Decl. ¶¶ 3-4; Ex. B, Morrissey Decl. ¶¶ 3-4.) After the formal session, the parties  
9 continued discussions in the courthouse hallway and exchanged multiple offers.  
10 Plaintiff's attorney, Paul Gattone, discussed each offer with Plaintiff and Plaintiff  
11 eventually accepted settlement offers from both Merchant and Santo. (Doc. 204, Ex. A,  
12 Stuart Decl. ¶¶ 7-13; Ex. B, Morrissey Decl. ¶¶ 5-11.) Afterwards, Plaintiff joined the  
13 group and acknowledged the settlements verbally and by handshakes with Nathan Stuart,  
14 counsel for Merchant, and Arizona Assistant Attorney General Kelley Morrissey, counsel  
15 for Santo. (Doc. 204, Ex. A, Stuart Decl. ¶¶ 14; Ex. B, Morrissey Decl. ¶¶ 12-13.)  
16 Outside the courthouse, Stuart met with Plaintiff and Gattone and "again confirmed that  
17 the agreement was for a complete release of any and all claims." (Doc. 204, Ex. A, Stuart  
18 Decl. ¶ 15.) Stuart again shook hands with Plaintiff and Gattone before they left. (*Id.*)

19 On October 26, 2016, Stuart, on behalf of Merchant, emailed the settlement  
20 agreement to Gattone, and the attorneys agreed to advise Judge Burns that Merchant and  
21 Plaintiff had reached a settlement. They arranged for a conference call with Judge Burns  
22 on November 1, 2016. (Doc. 204, Ex. A, Stuart Decl. ¶¶ 18-22; Doc. 204-1 at 18-24  
23 (Settlement Agreement between Plaintiff and Merchant).)<sup>2</sup> The settlement between  
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25 <sup>1</sup> Plaintiff subsequently reached a settlement with Tucker, and the Court ordered  
26 that Tucker be dismissed with prejudice on December 1, 2016, unless a stipulation to  
27 dismiss was filed prior to that date. (*See* Docs. 197, 200.) Pursuant to the Court's  
28 November 1, 2016 order (Doc. 200), Tucker will be dismissed with prejudice.

<sup>2</sup> The page numbers cited refer to the Court's electronically generated page numbers.

1 Merchant and Plaintiff included a payment of \$8,500.00 to Plaintiff as consideration for  
2 his release of all existing and potential claims against Merchant arising between  
3 July 1, 2012 and March 3, 2013. (Doc. 204-1 at 18-20.)

4 Also on October 26, 2016, Santo's attorney, Morrissey, sent to Gattone a  
5 Settlement Agreement, a Stipulation for Dismissal with Prejudice, and a proposed Order  
6 for Dismissal. (Doc. 204, Ex. B, Morrissey Decl. ¶ 17; Doc. 204-2 at 10-19 (Settlement  
7 Agreement between Plaintiff and Santo, Stipulation, and proposed Order.) The  
8 settlement between Santo and Plaintiff included a total payment of \$7,500.00 to Plaintiff  
9 in exchange for releasing and discharging Santo and the State of Arizona from the claims  
10 asserted against them in the litigation. (Doc. 204-2 at 11-12.)

11 On November 1, 2016, shortly before the call with Judge Burns, Gattone told  
12 Stuart and Morrissey that Plaintiff wanted to withdraw from the settlement. (Doc. 204,  
13 Ex. A, Stuart Decl. ¶ 24; Ex. B, Morrissey Decl. ¶ 18.) Upon learning that Plaintiff  
14 wanted to withdraw, Judge Burns had Plaintiff join the call. (Doc. 204, Ex. A, Stuart  
15 Decl. ¶ 26; Ex. B, Morrissey Decl. ¶ 20.) Stuart asserts that when Plaintiff joined the  
16 call, he "advised that he did not want to honor the settlement agreements because he had  
17 spoken with some 'Scottsdale attorneys,' who advised that he had accepted an  
18 insufficient amount for his claims." (Doc. 204, Ex. A, Stuart Decl. ¶ 26; *see also* Ex. B,  
19 Morrissey Decl. ¶ 20.) Plaintiff claimed that settlement agreements were not reached on  
20 October 24, 2016 because (1) he had not signed anything and (2) "despite the fact that he  
21 was consulted with prior to providing acceptance, . . . his acceptance was not valid  
22 because he was not physically present for the negotiations held between attorneys; he was  
23 down the hallway and could not hear the conversation." (Doc. 204, Ex. A, Stuart Decl.  
24 ¶ 26; *see also* Ex. B, Morrissey Decl. ¶ 20.)

25 On November 2, 2016 Gattone filed a Motion to Withdraw as Attorney of Record  
26 for Plaintiff. (Doc. 199.) Gattone asserted that Plaintiff "entered into a settlement  
27 agreement with all three Defendants after a many hour settlement conference on  
28 October 24, 2016," but Plaintiff "has decided to withdraw from these agreements with

1 Defendants Santo[] and Merchant and to force this matter to trial.” (*Id.* at 1.) Gattone  
2 said “Plaintiff’s actions were taken despite [Gattone’s] advice to the contrary and  
3 [Gattone] feels that to continue on in this matter would violate his professional and  
4 person[a]l ethical standards.” (*Id.* at 2.) Plaintiff did not respond to Gattone’s motion.  
5 By order dated November 14, 2016, the Court permitted Gattone to withdraw, stating that  
6 “Plaintiff shall be appearing pro se in this matter.” (Doc. 202.)<sup>3</sup>

## 7 **II. Legal Standard**

8 A federal district court has inherent authority to enforce agreements that settle  
9 litigation before it. *See In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir.  
10 1994). “A settlement is a contract, and its enforceability is governed by familiar  
11 principles of contract law.” *Knudsen v. C.I.R.*, 793 F.3d 1030, 1035 (9th Cir. 2015)  
12 (citing *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989)); *see Adams v. Johns-*  
13 *Manville Corp.*, 876 F.2d 702, 709 (9th Cir. 1989) (a motion to enforce a settlement  
14 agreement is essentially “an action to specifically enforce a contract”). The movant has  
15 the burden of demonstrating that the parties formed a legally enforceable settlement  
16 agreement. *In re Andreyev*, 313 B.R. 302, 305 (B.A.P. 9th Cir. 2004). In Arizona,  
17 “where the client expressly so authorizes the attorney, the attorney may enter into an  
18 agreement on the client’s behalf compromising a lawsuit, and his action in doing so binds  
19 the client.” *Hays v. Fischer*, 777 P.2d 222, 227 (Ariz. Ct. App. 1989); *see also Zeinaty v.*  
20 *Schimikowsky*, No. CV-05-3759-PCT-DGC, 2006 WL 1663257, at \*1 (D. Ariz. June 9,  
21 2006).

## 22 **III. Discussion**

23 Defendants have met their burden of showing that the parties formed legally  
24 enforceable settlement agreements. Merchant agreed to pay Plaintiff \$8,500.00 and  
25 Plaintiff agreed to release all existing and potential claims against Merchant arising  
26 between July 1, 2012 and March 3, 2013. (Doc. 204-1 at 18-20.) The agreement further  
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28 <sup>3</sup> The Court notes that Plaintiff has proceeded pro se throughout most of this  
matter and that attorney Gattone appeared in the case shortly before the settlement  
conference. Doc. 188.

1 provides that each party is to bear its own attorneys' fees, that there is no admission of  
2 liability or wrongdoing by either party, and that Plaintiff's claim against Merchant is not  
3 related to or arising from medical malpractice. (*Id.* at 22-23.) In Santo's agreement, the  
4 State of Arizona, on behalf of Santo, agreed to pay Plaintiff \$7,500.00, and Plaintiff  
5 agreed to release the claims asserted against Santo and the State. (Doc. 204-2 at 11.) The  
6 agreement further provides that each party is to bear its own attorneys' fees, costs, and  
7 expenses, that there is no admission of liability by Santo, and that they will execute a  
8 Stipulation of Dismissal with prejudice of this case. (*Id.* at 12-13.)

9 Defendants reached these agreements with Plaintiff's attorney, Mr. Gattone, and  
10 there is no doubt that Gattone was authorized by Plaintiff to engage in the settlement  
11 efforts. Plaintiff was present and represented by Gattone throughout the settlement  
12 conference with Judge Burns, Plaintiff knew that settlement talks continued in the  
13 hallway after the conference ended, and Plaintiff confirmed the settlements reached by  
14 Gattone and shook hands with defense counsel after the agreements were reached.  
15 Gattone's actions in reaching the agreements are therefore binding on Plaintiff. *Hays*,  
16 777 P.2d at 227; *Zeinaty*, 2006 WL 1663257, at \*1.

17 Plaintiff has failed to rebut Defendants' evidence of the oral and written  
18 agreements he made with Merchant and Santo. Nor does Plaintiff dispute that he told  
19 Judge Burns on November 1, 2016 that "he did not want to honor the settlement  
20 agreements" after speaking with some Scottsdale attorneys who allegedly told him he had  
21 accepted "an insufficient amount for his claims[.]" (Doc. 204, Ex. A, Stuart Decl. ¶ 26;  
22 *see also* Ex. B, Morrissey Decl. ¶ 20.) This statement is an implicit admission to the  
23 existence of binding settlement agreements. Moreover, Plaintiff failed to file any  
24 response to the statement in Gattone's Motion to Withdraw that Plaintiff "entered into a  
25 settlement agreement with all three Defendants after a many hour settlement conference  
26 on October 24, 2016[.]" (Doc. 199 at 1.)

27 Finally, Plaintiff failed to file any response to Defendants' Joint Motion to  
28 Enforce, even after the Court explicitly warned him that failure to respond "may be

1 construed as consent to the granting of the motion without further notice.” (Doc. 205,  
2 citing LRCiv 7.2(i); *Bridges v. Lewis*, 18 F.3d 651 (9th Cir. 1994).) Because the Motion  
3 to Enforce has been pending for over two months without any response from Plaintiff, the  
4 Court will deem Plaintiff’s failure to respond as consent to the granting of the Joint  
5 Motion to Enforce Settlement Agreement. The Court will enforce the agreements  
6 reached by the parties.<sup>4</sup>

7 **IT IS ORDERED:**

- 8 1. The reference to the Magistrate Judge is withdrawn and Defendants’ Joint  
9 Motion to Enforce Settlement Agreement (Doc. 204) is **granted**.
- 10 2. All claims against Defendant Merchant are dismissed with prejudice.  
11 Merchant shall pay Plaintiff \$8,500.00 within 30 days of this order.  
12 Plaintiff has released all existing and potential claims against Merchant  
13 arising between July 1, 2012 and March 3, 2013, each party shall bear its  
14 own attorneys’ fees and costs, there is no admission of liability or  
15 wrongdoing by either party, and Plaintiff’s claim against Merchant does not  
16 relate to or arise from medical malpractice.
- 17 3. All claims against Defendant Santo are dismissed with prejudice. The State  
18 of Arizona, on behalf of Santo, shall pay Plaintiff \$7,500.00 within 30 days  
19 of this order. Plaintiff has released Santo and the State of Arizona from the  
20 claims asserted against them in this litigation. The parties shall bear their  
21 own attorneys’ fees and costs, and there is no admission of liability or  
22 wrongdoing by either party.

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24 <sup>4</sup> Under the Court’s Local Rules, “[n]o agreement between parties or attorneys is  
25 binding, if disputed, unless it is in writing signed by the attorney of record or by the  
26 unrepresented party[.]” LRCiv 83.7. Plaintiff does not dispute the terms of the  
27 agreements or the fact that they were reached. Even if the local rule applied, the Court  
28 would view it as satisfied by the following court filings: the written filings of defense  
counsel confirming that a settlement agreement was reached (Docs. 204-1, 204-2) and  
Plaintiff’s counsel’s written confirmation that “Plaintiff entered into a settlement  
agreement with all three Defendants after a many hour settlement conference on  
October 24, 2016.” (Doc. 199).

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4. Pursuant to the Court's November 1, 2016 order (Doc. 200), Defendant Tucker is **dismissed with prejudice**.

5. Judgement is entered in accordance with this order and the Clerk is directed to terminate this action.

Dated this 14th day of February, 2017.



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David G. Campbell  
United States District Judge