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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Sharon Garnes,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendant.
14

No. CV-19-03199-PHX-MTL

ORDER

15 Before the Court is Defendant City of Phoenix’s (the “City”) Motion to Enforce
16 Settlement Agreement (the “Motion”) (Doc. 77). The Court held an evidentiary hearing
17 and arguments related to the Motion. (Doc. 89.) For the following reasons, the Motion
18 will be granted.

19 **I. BACKGROUND**

20 The City and Plaintiff Sharon Garnes participated in a settlement conference
21 before Magistrate Judge Camille D. Bibles on January 7, 2021. (Doc. 74.) The City
22 offered Ms. Garnes a \$500 check and to clear her Public Housing account balance of
23 \$401.82 in exchange for dismissing the case. (Doc. 77-3 at 10.) Settlement was not
24 reached.

25 Shortly thereafter, on January 24, 2021, Ms. Garnes contacted the City’s counsel
26 by email to say, “if the offer is still there I will take it and settle.” (*Id.* at 11.) The City’s
27 counsel responded the next day informing Ms. Garnes that the previous settlement offer
28 was still open. (*Id.* at 10.) Defense counsel also noted that she was attaching a settlement

1 agreement and stipulation for dismissal for Ms. Garnes' review and would mail a hard
2 copy of these documents to her as well. (*Id.*) Ms. Garnes replied later that day and said, "I
3 think I signed it" but she did not know if she "signed it right." (*Id.* at 9.) She also asked
4 for two hard copies and mentioned she would "sign it if it didn't go through." (*Id.*) The
5 City's counsel responded to Ms. Garnes to let her know that she did not receive her
6 signature but could "re-send the documents . . . via email for an electronic signature using
7 Adobe." (*Id.* at 8.)


8 The next day, defense counsel emailed Ms. Garnes to let her know that she would
9 be receiving documents that could be signed using a "phone or any computer" and
10 detailed the multiple steps involved to sign the documents. (*Id.* at 7.) Ms. Garnes
11 responded quickly, "when you send it I'll sign it." (*Id.*) The settlement agreement was
12 sent to Ms. Garnes shortly thereafter. (Doc. 91, Ex. 61.) An Adobe "Final Audit Report"
13 shows that someone from Ms. Garnes' email "e-signed" the settlement agreement at
14 11:03 AM MST. (*Id.*) The City then emailed Ms. Garnes to alert her that the City's
15 finance department also requires her to "complete a W-9 in order to write [her] a check."
16 (Doc. 77-3 at 5-6.) Ms. Garnes expressed her concern about taxes being taken out of her
17 settlement check and stated, if that happened, she would "cancel the other paper [she]
18 signed." (*Id.* at 5.) Defense counsel assured Ms. Garnes that this was standard procedure,
19 no taxes would be taken out, and she would send a copy in the mail. (*Id.* at 3-4.) Ms.
20 Garnes then sent a chain of emails indicating that she would not sign the tax document
21 and she would now "only settle for no less than \$5,000." (*Id.* at 1-3.) Ms. Garnes also
22 alleged that the City intimidated and forced her to sign the settlement.¹ (*Id.*) For the first
23 time on January 29, she also mentioned that the signed settlement agreement was not her
24 signature and her friend "did it on his [phone]." (Doc. 88-1 at 1.) The City then filed the
25 instant Motion two weeks later. (Doc. 77.)

26 The Court conducted a status conference to better understand the signature issue
27 and ultimately set an evidentiary hearing to determine the signed settlement agreement's

28 ¹ Ms. Garnes reiterated these points at the evidentiary hearing. (*See, e.g.*, Doc. 97 at 13,
17.)

1 validity. (Doc. 87.) The Court then held the evidentiary hearing. (Doc. 89.) At the
2 hearing, the Court heard arguments by both parties and testimony from two witnesses—
3 Ms. Garnes and Kevin Banton. (Doc. 97 at 2.) The relevant testimony for those two
4 witnesses is as follows.

5 Ms. Garnes agreed that the communications outlined above were true, “except for
6 the signing of the document.” (*Id.* at 12.) She also clarified that she kept asking for hard
7 copies because she had never read the settlement agreement until February 20. (*Id.* at 12,
8 16, 33.) As to the day the document was signed, Ms. Garnes testified that Mr. Banton, her
9 “friend” and “mother’s yard man,” was “doing the yard” at her mother’s house. (*Id.* at
10 44–45.) She noted that Mr. Banton left his phone on the porch and she “got it” to read
11 and sign the settlement document. (*Id.* at 43–46.) Ms. Garnes then unlocked his phone
12 and logged into her Gmail account to pull up the settlement agreement. (*Id.* at 43–44.)
13 She tried to “blow it up” so she could read and sign the agreement. (*Id.* at 45.) She also
14 “had it up ready to sign” and “was in the process of signing it.” (*Id.* at 62.) While doing
15 this, Ms. Garnes testified that Mr. Banton saw her with his phone and “came running
16 over . . . to get his phone.” (*Id.*) She stated that “[h]e asked me what I was doing and I
17 told him I was trying to read this because I’m trying to settle this with the City.” (*Id.* at
18 45.) Ms. Garnes testified that he tried to “help” her, but she said, “[d]on’t do that.” (*Id.* at
19 46.) At that point, Ms. Garnes noted that she “had no idea [the signature] went through.”
20 (*Id.*) What appears to be a signature was applied and transmitted through the Adobe
21 software. (Doc. 91, Ex. 61 at 3.)

22
23
24 By:  SHARON GARNES (Jan 26, 2021 11:03 MST)
25 Sharon Garnes

26 Mr. Banton then recounted his version of the events. He testified that he saw Ms.
27 Garnes with his phone so he “snatched the phone and started . . . erasing whatever [she]
28 was doing.” (Doc. 97 at 51.) Mr. Banton testified that he began “clicking” and “swiping”

1 whatever was on the phone to get it off because he did not “want it on [his] phone.” (*Id.*
2 at 53–55.) He reiterated several times that he did not put a signature on the document. (*Id.*
3 at 55.) As to the Adobe steps necessary to complete the signature on the phone, Mr.
4 Banton did not recall seeing any prompts or buttons on his screen and did not take any
5 steps himself to complete the signature process. (*Id.* at 54–56.) After the document was
6 off his screen, Mr. Banton “put the phone in [his] pocket and kept doing what [he] was
7 doing.” (*Id.* at 56.) He also noted that he had no intention of helping Ms. Garnes sign the
8 document. (*Id.*) After reviewing the signed settlement agreement at the hearing, Mr.
9 Banton testified that it was possible, although he did not pay “attention to it,” that his
10 multiple swipes to get the document off his phone could have generated the signature.
11 (*Id.* at 59–61.) Specifically, Mr. Banton noted that the signature “looks like a swipe” to
12 him. (*Id.* at 60–61.)

13 **II. LEGAL STANDARD**

14 The Court has inherent authority to enforce settlement agreements. *In re City*
15 *Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). The district court may,
16 however, “enforce only complete settlement agreements. Where material facts
17 concerning the existence or terms of an agreement to settle are in dispute, the parties must
18 be allowed an evidentiary hearing.” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987).

19 State contract law governs whether the parties reached an enforceable agreement.²
20 *Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014). Under Arizona law, “for an
21 enforceable contract to exist[,] there must be an offer, an acceptance, consideration, and
22 sufficient specification of terms so that the obligations involved can be ascertained.”
23 *Savoca Masonry Co. v. Homes & Son Const. Co.*, 112 Ariz. 392, 394 (1975). “The very
24 existence of the contract itself, the meeting of the minds, the intention to assume an
25 obligation, and the understanding are to be determined in case of doubt, not only from the
26 words used, but also from the situation, acts and conduct of the parties, and from the
27 attendant circumstances.” *Malcoff v. Coyier*, 14 Ariz. App. 524, 526 (1971). The party

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² The parties both agree that Arizona law applies to this dispute. (*See* Doc. 97 at 6–7.)

1 seeking enforcement of the contract has the burden of proving its existence. *Slater v.*
2 *Arizona*, 2019 WL 5801981, at *3 (D. Ariz. Nov. 7, 2019).

3 **III. DISCUSSION**

4 At issue is whether the parties entered into an enforceable settlement agreement.
5 The City argues that Ms. Garnes’ signing of the settlement agreement, and her
6 accompanying conduct, make clear that she accepted the City’s settlement offer. (Doc.
7 77.) First, there is what appears to be Ms. Garnes’ signature on the settlement agreement.
8 Second, Ms. Garnes’ emails, the City contends, “clearly indicate that she represented to
9 the City that she had signed the document” and intended to be bound by the agreement.
10 (Doc. 97 at 63–64.) The City also argues that Ms. Garnes has not, and cannot, overcome
11 the presumption that her electronic signature is valid. (Doc. 81 at 3–4; Doc. 97 at 63–64.)
12 Ms. Garnes maintains that she did not sign the agreement, nor did she read the agreement
13 until weeks after the electronic signature was submitted. (Doc. 97 at 13, 24, 33.) As
14 mentioned above, the settlement agreement at issue is governed by Arizona contract law,
15 which requires, at a minimum, an offer, an acceptance, consideration, and adequate
16 specification of terms so that obligations can be ascertained to have an enforceable
17 contract. *Rogus v. Lords*, 166 Ariz. 600, 602 (App. 1991). The Court will therefore
18 address each argument in turn.

19 **A. Enforceable Agreement**

20 There is no question that there was an offer by the City to settle. In response to
21 Ms. Garnes asking if the previous offer “is still there,” the City indicated that the offer
22 was still open and that it was “still willing to settle for those terms.” (Doc. 77-3 at 10–
23 11.) The City also attached a settlement agreement document and stipulation for
24 dismissal on that email for her review. (*Id.* at 10.) This settlement agreement laid out the
25 consideration involved and contained adequate specification of terms. (Doc. 77-1 at 1–3.)
26 The agreement clearly identified the “Settlement Consideration,” which noted that Ms.
27 Garnes would voluntarily dismiss this action with prejudice and the City would issue her
28 a \$500 check and clear her housing balance of \$401.82. (*Id.* at 1–2.) Looking at the

1 agreement, the Court is satisfied that the settlement agreement contains specified terms so
2 that the obligations involved can be ascertained. (*Id.* at 1–3.) Whether Ms. Garnes
3 accepted the offer is the only element at issue.

4 “Under general contract principles, an acceptance must be unequivocal and on
5 virtually the exact same terms as the offer.” *Contreras v. Contreras*, No. 2 CA-CV 2018-
6 0145, 2019 WL 3285230, at *3 (Ariz. App. July 22, 2019) (citation omitted). The City
7 contends that Ms. Garnes’ accepted its renewed offer to settle the case by her conduct and
8 signing of the electronic document. (Doc. 77 at 1–2; Doc. 81 at 2–4; *see also* Doc. 97 at
9 42–46, 63–64.) Ms. Garnes maintains that she did not sign the document and did not even
10 read it until weeks after the electronic signature was processed. (Doc. 97 at 65–67.) The
11 Court agrees with the City that Ms. Garnes validly entered into the settlement agreement.

12 The most important fact is that there is a signature on the settlement agreement
13 above the printed name “Sharon Garnes.” Beyond this, Ms. Garnes’ statements and
14 conduct confirm that she signed it. Ms. Garnes was the party who initially reached out to
15 the City to accept its previous offer and “settle” the case. (Doc. 77-3 at 11.) After being
16 sent the settlement agreement and an email with terms listed explicitly, she told the City
17 that she thought she “signed it.” (*Id.* at 9–10.) Although that signature did not go through
18 to the City at that time, Ms. Garnes continued to state that she would sign the agreement
19 when the Adobe settlement version was sent to her. (*Id.* at 7.) Ms. Garnes admitted that
20 she was “in the process” of signing the settlement agreement the day that the Adobe
21 report recorded her signature. (Doc. 97 at 66.) She also said, later on, that she in fact
22 signed the settlement agreement but wished to “cancel” it and obtain more money. (*Id.* at
23 66–67; Doc. 77-3 at 5.) The Court therefore finds that the marking on the settlement
24 agreement is a signature and that the signature was hers.³

25 ³ The City contends that “A.R.S. § 44-7033(B) provides that there is a rebuttable
26 presumption that an electronic signature is the electronic signature of the party to whom it
27 relates.” (Doc. 81 at 3.) Ms. Garnes does not rebut this argument at any point. Under the
28 Arizona Electronic Transactions Act, “[a] record or signature in electronic form cannot
be denied legal effect and enforceability solely because the record or signature is in
electronic form,” A.R.S. § 44-7007(A), and there is a rebuttable presumption that the
settlement agreement’s signature is Ms. Garnes’ signature. A.R.S. § 44-7033(B). Ms.
Garnes has failed to overcome this presumption. Even if this presumption did not exist,

1 As mentioned above, Ms. Garnes testified that she had pulled up the signature box,
2 a step required through the Adobe process. She then said she was signing the agreement
3 until Mr. Banton came over. Mr. Banton testified that he was “swiping” the screen to get
4 the document off his phone, but when asked to evaluate the signature, he tried to dismiss
5 the signature as a product of his “swiping.” (Doc. 97 at 59–61.) He also testified that he
6 did not even know what was on the screen to begin with. Simply “swiping” or “clicking”
7 things off his phone could not have produced a somewhat distinctive signature like the
8 one that the agreement shows. (Doc. 80 at 10.) The marking that populated from the
9 Adobe software is clearly a signature, not a swipe. There were also inconsistencies
10 between his and Mr. Garnes’ testimony. For example, Ms. Garnes noted that Mr. Banton
11 was “helping” her with the process while he maintained he did no such thing. (Doc. 97 at
12 46, 56.) The Court does not find Mr. Banton’s testimony credible.

13 The argument that Ms. Garnes’ did not read the agreement, and should therefore
14 be excused, is also unpersuasive. First, there is ample evidence to show that she did in
15 fact read the settlement. At the evidentiary hearing, Ms. Garnes noted several times that
16 she was reading the settlement document before the electronic signature populated. (*See*
17 Doc. 97 at 62.) She also implied in her emails that she had read the paperwork at issue.
18 (*See, e.g.*, Doc. 77-3 at 2 (noting that Ms. Garnes was “going to read that papwork [sic]
19 *again*”) (emphasis added).) Second, even if she did not read the agreement, Ms. Garnes
20 would nonetheless be bound by the settlement’s terms. *See Emp. Painters’ Tr. v. J & B*
21 *Finishes*, 77 F.3d 1188, 1192 (9th Cir. 1996) (“A party who signs a written agreement is
22 bound by its terms, even though the party neither reads the agreement nor considers the
23 legal consequences of signing it.”). The parties’ actions, emails, and testimony show that
24 there was an enforceable settlement agreement between the two.

25 It appears to the Court that, at some point after signing the agreement, Ms. Garnes
26 changed her mind. The law does not allow someone to undo an enforceable agreement
27 merely because she had a change of heart. *See United Cal. Bank v. Prudential Ins. Co. of*

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the record is full of evidence to show that Ms. Garnes signed the document at issue.

1 *Am.*, 140 Ariz. 238, 277 (App. 1983). For these reasons, the City has met its burden and
2 the settlement agreement will be enforced.

3 **B. Ms. Garnes’ Defenses to Enforcement**

4 Ms. Garnes mentions several times that she was intimidated by the City’s actions
5 and under duress during the time the settlement agreement was signed. (Doc. 80 at 2–3;
6 Doc. 97 at 36, 38.) Specifically, Ms. Garnes points to the City’s attempt to extend
7 deadlines as the reason that she thinks the city violated A.R.S. § 13-412. (*Id.*) The City
8 contends that § 13-412 does not apply because that statute provides a “defense to
9 culpability for a criminal act.” (Doc. 81 at 2.) The Court agrees with the City that § 13-
10 412 does not fit in this context. This statute applies only in the criminal context, not a
11 civil dispute. The Court also does not see how the City asking for an extension for
12 deadlines would intimidate Ms. Garnes or cause her duress.

13 Although Ms. Garnes is not clear on what other grounds would require this Court
14 to not enforce her signature, she does mention that she had mental and medication issues.
15 (Doc. 97 at 32, 36.) Ms. Garnes, however, does not elaborate on how this impaired her
16 ability to understand the settlement agreement. She also does not argue or provide
17 evidence that these issues were present when she signed or read the settlement agreement.
18 For these reasons, Ms. Garnes’ arguments related to duress or incapacity are not
19 persuasive.

20 **IV. CONCLUSION**

21 Accordingly,

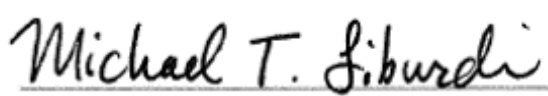
22 **IT IS ORDERED** granting the City’s Motion to Enforce Settlement Agreement
23 (Doc. 77).

24 **IT IS FURTHER ORDERED** denying as moot Ms. Garnes’ Motion for
25 Summary Judgment (Doc. 84).

26 **IT IS FINALLY ORDERED** directing the parties to abide by the Settlement
27 Agreement (Doc. 77-1). Ms. Garnes must comply with the terms of the settlement
28 agreement, including signing the stipulation for dismissal to receive her consideration no

1 later than May 11, 2021. The City shall disperse a \$500 check to Ms. Garnes and clear
2 her housing account balance of \$401.82 within 48 hours of receiving the signed
3 stipulation. The City must then file the signed stipulation for dismissal.

4 Dated this 3rd day of May, 2021.

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8 Michael T. Liburdi
9 United States District Judge
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