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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LINDA D. MORIARITY,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC,
and DOES 1-10,

Defendants.

Case No. 1:13-CV-855-SMS

ORDER GRANTING DEFENDANT
DEFENDANT’S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
TO IMPOSE SANCTIONS

(Doc. 46)

This matter is before the Court on Defendant Nationstar Mortgage LLC’s “Motion to Enforce Settlement Agreement and for Sanctions Pursuant to 28 U.S.C. 1927.” Doc. 46. Plaintiff did not file an opposition to the motion. No hearing was held as the Court found the matter suitable for submission on the papers. Local Rule 230(g); Doc. 47. For the following reasons, the motion is granted.

I. BACKBROUND

On November 26, 2014, Defendant filed a “Notice of Settlement of Entire Action,” informing the Court that Plaintiff had settled all claims against Defendant. Doc. 43. The parties fully executed a settlement agreement on December 15, 2014. Doc. 46, Ex. A. Under the agreement, Plaintiff was to file a dismissal with prejudice within five business days of receiving the fully executed agreement and settlement check. Doc. 46, Ex. A. On December 31, 2014, Defendant

1 sent Plaintiff a copy of the fully executed agreement and the \$5,400.00 settlement check. Doc. 46,
2 Ex. B. Plaintiff cashed or deposited the check on January 5, 2015, but did not file dismissal
3 documents. Doc. 46, Ex. C.

4 Thereafter, Defendant contacted Plaintiff on three separate occasions—January 27, March 4
5 and April 22, 2015—requesting that Plaintiff file dismissal documents. Doc. 46, Exs. D-F. Plaintiff
6 responded to the March 4, 2015 email, stating “she ‘ha[s] given it the same degree of priority of
7 Defendant did in issuing the settlement check. It will happen soon.’ ” Doc. 46, Ex. 1. In its April
8 22, 2015 email to Plaintiff, Defendant stated it would “move the court for an order enforcing the
9 settlement agreement, dismissing the action, and for an order of attorneys’ fees for the costs of
10 bringing the motion.” Doc. 46, Ex. F. Nearly seven months have passed since Plaintiff cashed or
11 deposited the settlement check and no dismissal documents have been filed.

13 II. DISCUSSION

14 A. *Enforcement of Settlement Agreement*

15 Defendant contends that Plaintiff’s failure to file dismissal documents violated the parties’
16 settlement agreement. Unable to obtain Plaintiff’s compliance, Defendant therefore requests that the
17 Court enforce the agreement by dismissing the lawsuit with prejudice. Def.’s Br. 1, 3. “[I]t is now
18 well established that the trial court has power to summarily enforce on motion a settlement
19 agreement entered into by the litigants while the litigation is pending before it.” *City of Equities*
20 *Anaheim v. Lincoln Plaza Dev. Co. (In re City Equities Anaheim)*, 22 F.3d 954, 957 (9th Cir. 1994)
21 (quotations and citation omitted). “The construction and enforcement of settlement agreements are
22 governed by principles of local law which apply to interpretation of contracts generally.” *United*
23 *Com. Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992). The Court therefore
24 applies California contract law to resolve this issue.

25 “[F]or acceptance of a proposal to result in the formation of a contract, the proposal must be
26 sufficiently definite, or must call for such definite terms in the acceptance, that the performance
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1 promised is reasonably certain. A proposal cannot be accepted so as to form a contract unless the
2 terms of the contract are reasonably certain. [P] . . . The terms of a contract are reasonably certain if
3 they provide a basis for determining the existence of a breach and for giving an appropriate remedy.”
4 *Weddington Productions, Inc. v. Flick*, 60 Cal.App.4th 793, 811 (1998) (quotations and citations
5 omitted). Moreover, there must be consent, which is “[a]n essential element of any contract” and
6 “[t]he consent must be mutual.” *Id.* (internal quotations and citations omitted). “The existence of
7 mutual consent is determined by objective rather than subjective criteria, the test being what the
8 outward manifestations of consent would lead a reasonable person to believe.” *Id.* (quotations and
9 citation omitted).

11 In this case, the requirements of an enforceable contract are present. First, the terms are
12 sufficiently definite and reasonably certain. As stated, Plaintiff is to provide Defendant with a fully
13 executed W-9 and dismiss the suit with prejudice within five business days of receiving \$5,400.00
14 and the fully executed agreement from Defendant. Doc. 46, Ex. A. A confidentiality clause
15 prohibits the parties from disclosing any information about the settlement unless one of the
16 enumerated exceptions applies; and among the exceptions are to “obtain court approval for dismissal
17 of the Action” and to “enforce this Agreement.” Doc. 46, Ex. A.

19 Finally, the agreement explicit states, “the terms and the drafting of this Agreement have
20 been by mutual agreement[.]” Doc. 46, Ex. A. This language, coupled with the parties’ signatures,
21 demonstrate their mutual consent to the agreement and its terms therein. Doc. 46, Ex. A; *see Binder*
22 *v. Aetna Life Ins. Co.*, 75 Cal.App.4th 832, 851(1999) (“[T]he outward *manifestation or expression*
23 of assent is controlling.”). Because we have here a valid contract and the parties have agreed to its
24 terms, the Court may therefore enforce the agreement.

26 B. *Sanctions*

27 Defendant contends Plaintiff’s delay in filing dismissal documents is unreasonable and
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1 vexatious. It therefore requests the Court impose sanctions against Plaintiff for the attorneys' fees
2 expended in bringing this motion. Def.'s Br. 3-4.

3 Section 1927 provides, "[a]ny attorney or other person admitted to conduct cases in any court
4 of the United States or any Territory thereof who so multiplies the proceedings in any case
5 unreasonably and vexatiously may be required by the court to satisfy personally the excess costs,
6 expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. 1927 (2015).
7 The imposition of § 1927 sanctions "requires a finding of subjective bad faith." *MGIC Indemnity*
8 *Co. v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991). Even a *pro se* plaintiff may face such sanctions.
9 *Wages v. Internal Revenue Serv.*, 915 F.2d 1230, 1235-36 (9th Cir. 1990).

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11 The facts of this case warrant the imposition of sanctions. Plaintiff cashed or deposited the
12 settlement check from Defendant on January 5, 2015. Under the parties' agreement, she was to then
13 file dismissal documents within five business days. But despite repeated requests from Defendant—
14 three emails—Plaintiff did not comply. Plaintiff even responded to Defendant's March 4, 2015
15 email and suggested that her delayed action was to reciprocate Defendant's delay in issuing the
16 settlement check. Now, nearly seven months after Plaintiff received her money, no dismissal
17 documents have been filed. Defendant's patience was not rewarded.

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19 Notwithstanding the fact that Defendant's issuance of the check just two weeks after the
20 parties executed the agreement did not amount to a delay, Plaintiff's conduct and words reflect an
21 intentional and unreasonable violation of the parties' agreement. They show bad faith. Under the
22 circumstances, the Court will therefore impose sanctions against Plaintiff for the attorneys' fees
23 Defendant expended in bringing this motion.

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25 Defendant requests \$1,567.00 in attorneys' fees. Def.'s Br. 4. This amount represents
26 counsel's billing rate of \$285.00 per hour for all the actual and anticipated hours spent in connection
27 with this motion. Because no opposition was filed which may have required a reply and the Court
28 vacated the hearing, any time expended was limited to counsel's preparation for the motion and

1 supporting documents. Doc. 47. The Court will therefore order that Plaintiff reimburse Defendant
2 \$855.00 (\$285.00 x 3 hours)¹ for the attorneys' fees Defendant incurred in connection with this
3 motion.

4 III. CONCLUSION

5 Defendant's "Motion to Enforce Settlement Agreement and for Sanctions Pursuant to 28
6 U.S.C. 1927" is hereby granted. It is ordered that (1) this suit be dismissed with prejudice and
7 (2) Plaintiff shall pay Defendant \$855.00, by money order or cashier's check, no later than August
8 31, 2015.
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11 IT IS SO ORDERED.

12 Dated: July 29, 2015

/s/ Sandra M. Snyder
13 UNITED STATES MAGISTRATE JUDGE
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28 ¹ Defendant's counsel "spent 3.0 hours preparing the notice of motion, motion, memorandum of points and authorities, and declaration in support of Defendant's motion to enforce the settlement agreement." Doc. 46, Ex. 1.