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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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C. JEFFERY EVANS,
Plaintiff,

v.
Y'S FRIES, INC.,
Defendant.

NO. CIV. S-10-2297 FCD DAD

MEMORANDUM AND ORDER

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This matter is before the court on defendant Y's Fries, Inc.'s ("defendant") motion for summary judgment. Defendant contends the instant action is barred by a Settlement Agreement and General Release plaintiff C. Jeffery Evans ("plaintiff") previously executed with defendant's primary shareholder, Marilyn Yawnick.¹ Plaintiff opposes the motion, arguing this action is not encompassed within the release of claims contained in the settlement agreement.

¹ Because the court finds that oral argument will not be of material assistance, it orders this matter submitted on the briefs. E.D. Cal. L.R. 230(g).

1 For the reasons set forth below, the court GRANTS
2 defendant's motion.

3 **BACKGROUND²**

4 On March 27, 2009, plaintiff filed a lawsuit against Marilyn
5 Yawnick ("Yawnick") in this court, Evans v. Yawnick, et al., Civ.
6 Case No. 09-844 JAM/GGH ("Yawnick Action"). (Pl.'s Resp. to
7 Def.'s Stmt. of Undisputed Facts ["SUF"], filed April 29, 2011
8 [Docket #21-1], ¶ 1.) In that suit, plaintiff sought injunctive
9 relief and damages for alleged violations of the Americans with
10 Disabilities Act of 1990 ("ADA"), California Civil Code § 54 et
11 seq. and the Unruh Civil Rights Act. (SUF ¶ 2.) On May 11,
12 2009, plaintiff and Yawnick reached a settlement, executing a
13 Settlement Agreement and General Release (the "Agreement"). (SUF
14 ¶ 3.)

15 The Agreement provided that the settlement was between
16 plaintiff and Yawnick³ "on behalf of herself, other affiliated
17 partnerships, partners, companies, divisions, subsidiaries,
18 insurers, and their officers, directors, employees, agents,
19 attorneys, representatives, successors and assigns." (SUF ¶ 4.)
20 In exchange for Yawnick's payment of \$15,000.00, plaintiff agreed
21 to the following:

- 22 (1) to "releas[e], acqui[t], and forever discharg[e]
23 [Yawnick] and [her] respective parent companies,
24 subsidiaries, lessors, successors, predecessors,

25 ² Unless otherwise noted, the court finds the following
26 facts undisputed.

27 ³ Franchise Realty Corp. was also a settling defendant in
28 the Agreement; however, the company is not involved in this
action, and thus, the court refers herein only to Yawnick.

1 assigns, affiliates, officers, directors, partners,
2 personal and legal representatives, agents, employees,
3 and attorneys (the "Released Parties"), and each of
4 them, from any and all claims of any kind and nature,
5 character known or unknown, disclosed or undisclosed,
6 which PLAINTIFF may now have, may in the future have,
7 or have ever had against any of the Released Parties,
8 including, but not limited to, any and all claims,
9 rights, demands, causes of action for violations of the
10 [ADA] . . . , violations of any other federal, state,
11 local, or public accommodations statutes, rules,
12 regulations, common law, or ordinances of any kind [SUF
13 ¶ 5][;]"

14 (2) to waive all rights under California Civil Code
15 § 1542,⁴ stating plaintiff "understands and expressly
16 agrees that [the] Agreement extends to any and all
17 claims of every kind and nature whatsoever, known or
18 unknown, suspected or unsuspected, past or present,
19 disclosed or undisclosed, which PLAINTIFF has or may
20 have against [Yawnick] [SUF ¶ 6][;]" and

21 (3) to "refrain from initiating any further litigation
22 against [Yawnick] [Id.]."

23 In a prior draft of the Agreement, which was written by
24 plaintiff's counsel in the Yawnick Action, plaintiff agreed to
25

26 ⁴ Section 1542 provides: "A general release does not
27 extend to claims which the creditor does not know or suspect to
28 exist in his favor at the time of executing the release, which if
known by him must have materially affected his settlement with
the debtor."

1 refrain from initiating any further litigation against Yawnick,
2 "solely in regard to the McDonald's Restaurant [which was the
3 subject of the Yawnick Action] located at 1806 Fort Jones Road,
4 Yreka, California;" the draft agreement provided that plaintiff
5 was *not* precluded from "engaging in litigation against [Yawnick]
6 as to any other potential claim arising from another location or
7 matter." (SUF ¶ 7.) However, Yawnick's counsel negotiated with
8 plaintiff to eliminate that provision; ultimately, as set forth
9 above, plaintiff agreed to "refrain from initiating any further
10 litigation against [Yawnick]." (SUF ¶ 8.)⁵

11 On August 26, 2010, plaintiff filed the instant action
12 against defendant Y's Fries, Inc., alleging claims for violation
13 of the ADA, California's Civil Rights Acts and the Unruh Civil
14 Rights Act. (SUF ¶ 9.) Yawnick is the primary shareholder of
15 Y's Fries, Inc. (SUF ¶ 10.)

16 STANDARD

17 The Federal Rules of Civil Procedure provide for summary
18 judgment where "the pleadings, the discovery and disclosure
19 materials on file, and any affidavits show that there is no
20 genuine issue as to any material fact and that the movant is
21 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c);
22 see California v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998).

23
24 ⁵ Plaintiff denies that Yawnick's counsel negotiated with
25 plaintiff to eliminate this provision (SUF ¶ 8); however,
26 plaintiff provides no basis for the denial of this fact, stating
27 only that it is a "legal conclusion." (Id.) While the wording
28 of defendant's statement of fact number 8 is, in part, a legal
conclusion, the fact remains undisputed that plaintiff ultimately
signed the Agreement which did not limit his release to only the
Yawnick Action's McDonald's property. Rather, plaintiff agreed
generally to refrain from initiating any further litigation
against Yawnick. (Id.)

1 The evidence must be viewed in the light most favorable to the
2 nonmoving party. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th
3 Cir. 2000) (en banc).

4 The moving party bears the initial burden of demonstrating
5 the absence of a genuine issue of fact. See Celotex Corp. v.
6 Catrett, 477 U.S. 317, 325 (1986). If the moving party fails to
7 meet this burden, "the nonmoving party has no obligation to
8 produce anything, even if the nonmoving party would have the
9 ultimate burden of persuasion at trial." Nissan Fire & Marine
10 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000).
11 However, if the nonmoving party has the burden of proof at trial,
12 the moving party only needs to show "that there is an absence of
13 evidence to support the nonmoving party's case." Celotex Corp.,
14 477 U.S. at 325.

15 Once the moving party has met its burden of proof, the
16 nonmoving party must produce evidence on which a reasonable trier
17 of fact could find in its favor viewing the record as a whole in
18 light of the evidentiary burden the law places on that party.
19 See Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th
20 Cir. 1995). The nonmoving party cannot simply rest on its
21 allegations without any significant probative evidence tending to
22 support the complaint. See Nissan Fire & Marine, 210 F.3d at
23 1107. Instead, through admissible evidence the nonmoving party
24 "must set forth specific facts showing that there is a genuine
25 issue for trial." Fed. R. Civ. P. 56(e).

26 ANALYSIS

27 The interpretation of a settlement agreement is governed by
28 principles of state contract law, even where a federal cause of

1 action is settled or released. Botefur v. City of Eagle Point, 7
2 F.3d 152, 156 (9th Cir. 1993). Under California law, the court
3 must interpret the contract by examining the contract's language,
4 the parties' clear intentions as expressed in the contract and
5 the circumstances under which the parties contracted. AIU Ins.
6 Co. v. Sup. Ct., 51 Cal. 3d 807, 822 (1990). The parties' intent
7 is to be inferred, if possible, solely from the written
8 provisions in the contract. Id. In assessing the parties'
9 intent, the terms of the contract must be considered in the
10 context of the contract as a whole. Cal. Civ. Code § 1641 ("The
11 whole of a contract is to be taken together, so as to give effect
12 to every part, if reasonably practicable, each clause helping to
13 interpret the other."). Release, indemnity and similar
14 exculpatory provisions are "binding on the signatories and
15 enforceable so long as they are . . . 'clear, explicit and
16 comprehensible in each [of their] essential details.'" Skrbina v.
17 Fleming Cos., 45 Cal. App. 4th 1353, 1368 (1996). As a general
18 rule, contractual limitations on liability for future conduct
19 must be clearly set forth. Gallagher v. San Diego United Port
20 District, Civ. 08-CV-886-IEG(RBB), 2009 WL 2781553, *5 (S.D. Cal.
21 2009).

22 Here, the Agreement clearly, on its face, extinguished all
23 future claims of every kind and nature whatsoever, whether known,
24 unknown or suspected which plaintiff had or may have against
25 Yawnick. As set forth above, plaintiff agreed to:

26 (1) "releas[e], acqui[t], and forever discharg[e] [Yawnick] and
27 [her] respective parent companies, subsidiaries, lessors,
28 successors, predecessors, assigns, [or] affiliates . . . from any

1 and all claims of any kind and nature, character known or
2 unknown, disclosed or undisclosed, which PLAINTIFF may now have,
3 may in the future have, or have ever had against [them],
4 including, but not limited to, any and all claims, rights,
5 demands, causes of action for violations of the [ADA] . . . [SUF
6 ¶ 5][;]" (2) to waive all rights under California Civil Code
7 § 1542, thus, agreeing that the release extended "to any and all
8 claims of every kind and nature whatsoever, known or unknown,
9 suspected or unsuspected, past or present, disclosed or
10 undisclosed, which PLAINTIFF has or may have against [Yawnick]
11 [SUF ¶ 6][;]" and (3) to "refrain from initiating any further
12 litigation against [Yawnick] [Id.]." The Agreement did not, in
13 any respect, tie plaintiff's release of claims to the Yawnick
14 Action, exclusively, or to the specific McDonald's property which
15 was the subject of that earlier action.

16 Plaintiff does not dispute that the instant complaint
17 against defendant Y's Fries, Inc. is an action against Yawnick,
18 as she is the primary shareholder of defendant. Plaintiff only
19 disputes that this action against Yawnick, *involving a different*
20 *property*, is covered by the Agreement. The basis for plaintiff's
21 dispute is not clear; from his opposition, it appears plaintiff
22 is asserting a public policy argument, arguing that it would be
23 "unfair" or "unjust" to preclude his pursuit of this action since
24 it involves a different property and different alleged violations
25 of the ADA. However, in support of this argument, plaintiff
26 cites wholly inapposite cases. For example, in Botosan v. Paul
27 McNally Realty, 216 F.3d 827, 833 (9th Cir. 2000), the Ninth
28 Circuit held that a lease agreement between the owners and the

1 lessee could not transfer all liability for ADA compliance to the
2 lessee. Disabled Rights Action Committee, also relied upon by
3 plaintiff, considered the issue of whether a private operator,
4 who did not own the arena where a rodeo was conducted, could be
5 held liable under the ADA. Disabled Rights Action Committee v.
6 Las Vegas Events, Inc., 375 F.3d 861 (9th Cir. 2004). Finally,
7 in PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001), the United
8 States Supreme Court addressed whether the ADA applies to
9 professional golf tournaments. Plaintiff fails to cite any case
10 addressing a settlement agreement in an ADA case, and certainly,
11 the above cases cited by plaintiff do not render, as plaintiff
12 urges, the type of Agreement entered in this case invalid.⁶

13 The Agreement's language in this case is clear. Moreover,
14 the parties' intent is evident considering, in particular, the
15 draft agreement's language which sought to limit plaintiff's
16 release to only the McDonald's property at issue in the Yawnick
17 Action. In the end, however, plaintiff agreed to a broad release
18 of any future claims against Yawnick. Plaintiff offers no facts
19 to rebut defendant's showing. The Ninth Circuit has repeatedly
20 recognized that in a contract dispute, "[s]ummary judgment is
21 appropriate when the contract terms are clear and unambiguous,
22 even if the parties disagree as to their meaning." See e.g.
23 United States v. King Features Entertainment, Inc., 843 F.2d 394,

24 _____
25 ⁶ Plaintiff is correct that the Gallagher case cited by
26 defendant is factually distinguishable from this case in that in
27 Gallagher, the same property was involved in the first and second
28 cases. However, it is not determinative of defendant's motion
that this case involves a different property. The parties were
free to contract as they wished, and as set forth above, it is
clear from the parties' conduct and the written agreement, that
plaintiff agreed to release Yawnick from any future ADA claims.

1 398 (9th Cir. 1988). Plaintiff fails to establish any ambiguity
2 in the contract or otherwise refute the contract's plain language
3 extinguishing any future claims against Yawnick.

4 **CONCLUSION**

5 Accordingly, for the foregoing reasons, the court GRANTS
6 defendant's motion for summary judgment. The instant action is
7 barred by the Agreement plaintiff entered into with Yawnick,
8 settling the Yawnick Action. The Clerk of the Court is directed
9 to close this file.⁷

10 IT IS SO ORDERED.

11 DATED: May 19, 2011

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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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⁷ For the first time in its reply, in one conclusory
26 sentence, defendant requests an award of fees on the ground
27 plaintiff's "suit is clearly frivolous, unreasonable, and without
28 foundation." (Reply, filed May 5, 2011, at 3:4-5.) As defendant
fails to cite any legal authority for its request or provide any
supporting declarations substantiating the fees' request, the
court summarily DENIES it.