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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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MARTIN GASCA, an individual,  
Plaintiff,  
v.  
COUNTY OF SACRAMENTO, a  
municipal corporation;  
OFFICER NATHAN BURNETTE; and  
DOES 2 through 25;  
Defendants.

CIV. NO. 2:15-1109 WBS CKD  
ORDER RE: MOTION TO ENFORCE  
SETTLEMENT AGREEMENT

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Plaintiff brought an action in the California Superior Court against the County of Sacramento for alleged police brutality in violation of 42 U.S.C. § 1983 and state tort law. (See Notice of Removal Ex. A, Compl. at 1 (Docket No. 1).) The county removed the action to this court. (Notice of Removal.) After removal, plaintiff filed an amended complaint identifying

1 Officer Nathan Burnette as a second defendant. (First Am.  
2 Compl.)

3 On May 25, 2016, defendants emailed plaintiff stating  
4 that they would be "willing to offer \$10,000" to settle the case.  
5 (Decl. of Kelley Kern ("Kern Decl.") Ex. A at 1 (Docket No. 25-  
6 2).) The next day, plaintiff responded that he "is agreeable to  
7 accepting the terms of the proposed settlement." (Id.) The  
8 parties filed a Notice of Settlement five days later. (See  
9 Notice of Settlement (Docket No. 17); Kern Decl. Ex. B at 3.)  
10 The parties then performed due diligence on the terms of the  
11 agreement.<sup>1</sup> (See Kern Decl. Ex. B at 1; id. Ex. C at 1-2; id.  
12 Ex. D at 1-2.) On August 8, defendants forwarded a draft of the  
13 settlement agreement to plaintiff's counsel for review. (Id. Ex.  
14 E at 1.) Plaintiff's counsel responded, "This looks fine. I  
15 have forwarded to my client for signature." (Id.)

16 Thereafter and at some point prior to September 12,  
17 plaintiff informed defendants that he would not be signing the  
18 settlement agreement. (Joint Status Report at 2 (Docket No.  
19 21).) Defendants now "move the court for an order enforcing the  
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21 <sup>1</sup> The agreement required that: (1) plaintiff "is not  
22 Medicare eligible"; (2) plaintiff "does not owe the County  
23 Department of Revenue Recovery or Child Support Departments any  
24 money"; (3) "County Risk Management [for Sacramento County] . . .  
25 approve the payment"; and (4) plaintiff produce letters from the  
26 hospitals he attended stating how much each would each receive  
27 out of the settlement. (Kern Decl. Ex. A at 1.) The parties  
28 satisfied each of these conditions. (See id. Ex. B at 1  
(confirming plaintiff is not Medicare eligible and has no liens  
with Sacramento County); id. Ex. C at 1 (stating that first  
hospital agrees to accept pro rata share); id. Ex. D at 1-2  
(attaching letter from second hospital); id. E (attaching  
settlement agreement for plaintiff's signature after requesting  
approval from County Risk).)

1 settlement agreement reached between Plaintiff and Defendants on  
2 May 26."<sup>2</sup> (Defs.' Mot. (Docket No. 25).) Pursuant to Local Rule  
3 230(c), plaintiff's counsel filed a statement of non-opposition  
4 in response to defendants' motion.<sup>3</sup> (Statement of Non-Opp'n  
5 ("Non-Opp'n") (Docket No. 26).)

6 It is "well established that the trial court has power  
7 to summarily enforce on motion a settlement agreement entered  
8 into by the litigants while the litigation is pending before it."  
9 In re City Equities Anaheim, Ltd., 22 F.3d 954, 957 (9th Cir.  
10 1994) (quoting Autera v. Robinson, 419 F.2d 1197, 1200 (D.C. Cir.  
11 1969)); see also Callie v. Near, 829 F.2d 888, 890 (9th Cir.  
12 1987) (holding the same). "[S]tate contract law governs whether  
13 [the parties] reached an enforceable agreement settling the  
14 federal and state law claims alleged in Plaintiffs' complaint."  
15 Wilcox v. Arpaio, 753 F.3d 872, 876 (9th Cir. 2014) (citing  
16 Botefur v. City of Eagle Point, Or., 7 F.3d 152, 156 (9th Cir.  
17 1993)).

18 Under California law, "[t]he essential elements of a  
19 contract are: parties capable of contracting; the parties'  
20 consent; a lawful object; and sufficient cause or consideration."  
21 Lopez v. Charles Schwab & Co., 118 Cal. App. 4th 1224, 1230 (1st  
22 Dist. 2004) (citing California Civil Code section 1550). "An

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23 <sup>2</sup> There is no indication that the August 8 draft differed  
24 in any material respect from the parties' May 26 agreement. (See  
25 Kern Decl. Ex. D (plaintiff's counsel responded "[t]his looks  
fine" after reviewing the August 8 draft).)

26 <sup>3</sup> Plaintiff's counsel states that he "has been unable to  
27 communicate with or locate plaintiff to discuss [the present  
28 motion] despite numerous and diverse attempts." (Statement of  
Non-Opp'n at 1 (Docket No. 26).)

1 essential element of any contract is the consent of the parties,  
2 or mutual assent. Mutual assent usually is manifested by an  
3 offer communicated to the offeree and an acceptance communicated  
4 to the offeror." Id. at 1229 (citing California Civil Code  
5 sections 1550 and 1565). "The existence of mutual consent is  
6 determined by objective rather than subjective criteria, the test  
7 being what the outward manifestations of consent would lead a  
8 reasonable person to believe." Weddington Prods., Inc. v. Flick,  
9 60 Cal. App. 4th 793, 811 (2d Dist. 1998) (quoting Meyer v.  
10 Benko, 55 Cal. App. 3d 937, 942-43 (2d Dist. 1976)).

11 If a valid agreement exists under state law, it must  
12 additionally meet two federal requirements. "First, it must be a  
13 complete agreement." Marks-Foreman v. Reporter Pub. Co., 12 F.  
14 Supp. 2d 1089, 1092 (S.D. Cal. 1998) (citing Maynard v. City of  
15 San Jose, 37 F.3d 1396, 1401 (9th Cir. 1994) and Callie, 829 F.2d  
16 at 890). "Second, both parties must have either agreed to the  
17 terms of the settlement or authorized their respective counsel to  
18 settle the dispute." Id. (citing Harrop v. Western Airlines,  
19 Inc., 550 F.2d 1143, 1144-45 (9th Cir. 1977)).

20 Here, all of the elements of an enforceable settlement  
21 agreement are present. Plaintiff and defendants engaged in a  
22 settlement negotiation over email which concluded with plaintiff  
23 stating that he "is agreeable to accepting the terms of  
24 [defendants'] proposed settlement." (See Kern Decl. Ex. A at 1-  
25 2.) The parties confirmed that they had settled by filing a  
26 Notice of Settlement five days after they reached the agreement.  
27 (See Notice of Settlement; Kern Decl. Ex. B at 3.) Each party  
28 offered and received consideration, (see Kern Decl. Ex. A at 1),

1 and the agreement was complete, (id. at 2 (noting that the  
2 agreement "resolve[d] this matter")). "[A]t all relevant times,  
3 counsel for plaintiff had the explicit authority from his client  
4 to enter into the settlement that was reached in this matter."  
5 (Non-Opp'n at 1.)

6 That the parties did not end up executing a formal  
7 settlement agreement does not alter the validity of their  
8 original agreement over email. See Blix St. Records, Inc. v.  
9 Cassidy, 191 Cal. App. 4th 39, 48-49 (2d Dist. 2010) ("When  
10 parties intend that an agreement be binding, the fact that a more  
11 formal agreement must be prepared and executed does not alter the  
12 validity of the agreement." (citing Mitchell v. Exhibition Foods,  
13 Inc., 184 Cal. App. 3d 1033, 1048 (1st Dist. 1986))).

14 Accordingly, the court will enforce the parties'  
15 settlement agreement reached on May 26.

16 IT IS THEREFORE ORDERED that defendants' motion to  
17 enforce the settlement agreement reached on May 26, 2016 be, and  
18 the same hereby is, GRANTED.

19 Dated: October 14, 2016

20   
21 WILLIAM B. SHUBB  
22 UNITED STATES DISTRICT JUDGE

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