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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOYCE MARIE SIMMONS,
Plaintiff,
v.
T. MISCHEL, et al.,
Defendants.

Case No. [18-cv-02193-VKD](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS WITHOUT
PREJUDICE**

Re: Dkt. No. 66

In this action, pro se plaintiff Joyce Marie Simmons, a federal prisoner previously confined at the Federal Correctional Institution in Dublin, California (“FCI-Dublin”),¹ filed suit against several FCI-Dublin prison officials for allegedly violating her constitutional rights. Following several rounds of briefing, one claim remained: Ms. Simmons’s claim for damages against the United States for supervisory negligence relating to an alleged battery by defendant Ashley Phillips under the Federal Tort Claims Act (“FTCA”). *See* Dkt. No. 51.

On March 24, 2020, the Court referred the action to Judge Robert M. Illman for a settlement conference, and the parties reached a settlement of the action on July 22, 2020. Dkt. Nos. 55, 62. Thereafter, the parties advised the Court of a disagreement concerning disposition of the United States’ settlement payment to Ms. Simmons and whether the United States had fulfilled its obligations under the parties’ settlement agreement. Dkt. No. 63. At the Court’s direction, the United States filed a motion to dismiss the action based on its position, Ms. Simmons responded, and the United States replied. Dkt. Nos. 66, 68, 69. The Court finds this matter suitable for

¹ After initiating this action, Ms. Simmons was released to home confinement for the remainder of her prison term. Dkt. No. 68 at 1.

1 resolution without oral argument. Civ. L.R. 7-1(b).

2 For the reasons explained below, the Court grants the United States’ motion to dismiss the
3 action pursuant to the parties’ settlement agreement without prejudice, so that Ms. Simmons may
4 exhaust her administrative remedies with respect to an offset of the settlement amount against a debt
5 owed to the United States.

6 **I. BACKGROUND**

7 The parties agreed to settle this action for payment by the United States of \$2,500 on July
8 22, 2020. Dkt. No. 66-1 ¶ 3. The parties memorialized their agreement in a settlement agreement
9 that same day. Dkt. No. 66-2, Ex. A. The settlement agreement contained the following
10 provision: “Treasury Offset Program: Nothing in this Agreement waives or modifies federal . . .
11 offsets . . . that may apply to this Agreement or the settlement proceeds, and Plaintiff is executing
12 this Agreement without reliance on any representation by Defendant as to the application of any
13 such law.” *Id.* at 5. After receiving the executed settlement agreement, counsel for the United
14 States requested the Judgment Fund wire the settlement proceeds to Ms. Simmons’s bank. Dkt.
15 No. 66-1 ¶ 5.

16 On August 21, 2020, counsel for the United States learned that the Judgment Fund did not
17 wire the settlement proceeds to Ms. Simmons’s bank because they were offset by the U.S.
18 Treasury pursuant to the Treasury Offset Program (“TOP”). *Id.* ¶ 6. Counsel notified Ms.
19 Simmons of this development and encouraged her to contact the TOP to find out why the offset
20 occurred and how she could challenge it if she wished to do so. *Id.*

21 On October 8, 2020, the United States Attorney’s Office for the Northern District of Texas
22 advised counsel for the United States that the settlement proceeds were offset pursuant to a
23 criminal restitution order against Ms. Simmons dated October 5, 2009 in Case No. 4:08-cr-00131-
24 A (N.D. Tex.). *Id.* ¶ 7; Dkt. No. 67 ¶ 3. Counsel for the United States suggested to Ms. Simmons
25 that if she wished to challenge the offset she should make an administrative claim and then, if
26 necessary, file a motion to challenge the offset in her criminal case in the Northern District of
27 Texas. Dkt. No. 66-1 ¶ 9.

28 On October 26, 2020, Ms. Simmons sent a letter to the U.S. Attorney for the Northern

1 District of Texas requesting payment of her settlement proceeds. Dkt. No. 68 at 1; Dkt. No. 67 ¶
2 8. The U.S. Attorney responded by letter dated November 11, 2020, requesting that Ms. Simmons
3 submit a financial statement by November 25, 2020. Dkt. No. 67 ¶¶ 9-10; Dkt. No. 69-1. As of
4 January 7, 2021, Ms. Simmons has not responded to the U.S. Attorney’s request for financial
5 information or taken additional steps to challenge the offset. Dkt. No. 69 at 2.

6 The United States contends that it has fulfilled its obligations under the settlement
7 agreement and asks the Court to enforce that agreement and dismiss the action without prejudice.

8 **II. LEGAL STANDARD**

9 While an action is pending, a district court has the inherent power to summarily enforce a
10 settlement agreement regarding that action. *See In re City Equities Anaheim, Ltd. v. Lincoln Plaza*
11 *Dev. Co.*, 22 F.3d 954, 957–58 (9th Cir. 1994). A settlement agreement is governed by principles
12 of state contract law, even where the underlying cause of action is federal. *Botefur v. City of*
13 *Eagle Point, Or.*, 7 F.3d 152, 156 (9th Cir. 1993) (citation omitted); *United Com. Ins. Serv., Inc. v.*
14 *Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992). Under California law, contract formation
15 requires (1) parties capable of contracting; (2) the parties’ consent; (3) a lawful object; and (4)
16 sufficient cause or consideration. *Lopez v. Charles Schwab & Co.*, 118 Cal. App. 4th 1224, 1230
17 (2004). “Mutual assent usually is manifested by an offer communicated to the offeree and an
18 acceptance communicated to the offeror.” *Id.* (citing Cal. Civ. Code §§ 1550, 1565).

19 A settlement agreement in a pending action may be enforced if two requirements are met:
20 (1) both parties must have agreed to the terms of the settlement or authorized their respective
21 counsel to settle the dispute, and (2) it must be a complete agreement. *See Callie v. Near*, 829
22 F.2d 888, 890–91 (9th Cir. 1987); *Harrop v. Western Airlines, Inc.*, 550 F.2d 1143, 1144–45 (9th
23 Cir. 1977).

24 **III. DISCUSSION**

25 The parties do not dispute that their settlement agreement is valid and enforceable. The
26 issue before the Court is whether the United States has complied with the essential terms of the
27 agreement, i.e., paying the agreed settlement amount of \$2,500 by electronic fund transfer to the
28 bank account designated by Ms. Simmons, subject to any applicable offsets.

1 The United States argues that the Court should dismiss this action without prejudice to
2 allow Ms. Simmons to exhaust her administrative remedies with the U.S. Attorney’s Office for the
3 Northern District of Texas and, if necessary, file a motion to challenge the offset in her underlying
4 criminal case in that district. Dkt. No. 66 at 2. In opposition, Ms. Simmons makes several
5 arguments. First, she contends that does not recall receiving a notice of offset in October 2009.
6 Dkt. No. 68 at 1. Second, she argues that she should not have to address payment of restitution
7 until she completes her term of imprisonment, which is set to conclude on October 18, 2024,
8 although she is presently serving the remainder of her prison sentence under home confinement.
9 *Id.* Third, Ms. Simmons argues that because she is confined to her home, she is unable to visit the
10 city law library to research her defense to the United States’ motion. *Id.* However, she concludes
11 by observing that she is “at peace,” whatever the outcome of this case. *Id.* at 2.

12 The Debt Collection Improvement Act of 1982, 31 U.S.C. §§ 3701 et seq., authorizes the
13 Treasury Department to collect non-tax debts by withholding funds paid out by other federal
14 agencies. 31 U.S.C. § 3716(a); 31 C.F.R. § 285.5(c)(2) (requiring the U.S. Treasury, as the
15 dispersing official under the Treasury Offset Program, to “offset the payment to satisfy, in whole
16 or part, the payee’s debt to the extent allowed by law”); *see generally Astrue v. Ratliff*, 560 U.S.
17 586 (2010) (describing offset authority). Any federal agency with a claim against the debtor may
18 collect the debt by administrative offset, after notifying the debtor that the debt is subject to
19 administrative offset and providing an opportunity to dispute the debt or make arrangements to
20 pay it. *See* 31 U.S.C. § 3716(a), (c)(6). The United States has submitted evidence showing that
21 the U.S. Attorney of the Northern District of Texas sent Ms. Simmons a notice of offset on
22 October 15, 2009, as required by 31 U.S.C. § 3716(a), and notified the Secretary of the Treasury
23 of Ms. Simmons’s outstanding restitution obligation on December 17, 2009, as required by 31
24 U.S.C. § 3716(c)(6)(A). Dkt. No. 67 ¶ 6. Although Ms. Simmons says she does not recall
25 receiving this notice, she does not otherwise dispute that notice was provided or that her restitution
26 obligation is eligible for the TOP. The parties’ settlement agreement specifically contemplates
27 that the settlement amount payable to Ms. Simmons may be subject to offset.

28 If the offset is valid, then United States has complied with the terms of the settlement

1 agreement. The circumstances here resemble those in *United States v. Bailey*, 775 F.3d 980 (8th
2 Cir. 2014). In *Bailey*, the United States withheld funds from a settlement of a civil action to offset
3 outstanding child support obligations under the TOP. The Eighth Circuit determined that the
4 United States had fully complied with its obligations under the settlement agreement because
5 “[t]he application of the funds to [plaintiff’s] child support obligation resulted in \$2,500 financial
6 benefit to him, albeit not the one he seeks in this appeal.” *Id.* at 981. Here, the United States
7 asked the Judgment Fund to issue the settlement payment, and that payment was applied to Ms.
8 Simmons’s outstanding restitution obligation, to her benefit.

9 Ms. Simmons appears to argue that the settlement payment should not be subject to offset
10 because she is not expected to make restitution until after her term of imprisonment. This
11 argument is more appropriately addressed to the U.S. Attorney of the Northern District of Texas
12 through an administrative challenge directed to that office. *See, e.g., Peone v. United States*, No.
13 2:12-CV-00083 KGB, 2020 WL 6047182, at *4 (E.D. Ark. Oct. 13, 2020) (district court
14 concluded it lacked jurisdiction to adjudicate merits of challenge to offset because complainant
15 had not exhausted administrative remedies with creditor agency). However, that Court observes
16 that Ms. Simmons’s argument appears to be inconsistent with the judgment and order in her
17 criminal case. The judgment provides that restitution is “payable immediately.” Dkt. No. 66-2,
18 Ex. B at 5. The judgment further provides that “non-payment will not be a violation of [Ms.
19 Simmons’s] conditions of supervised release so long as [she] pays as provided in [her] conditions
20 of supervised release.” *Id.* Those conditions provide a payment schedule for making restitution if
21 any part of the restitution amount remains unpaid when Ms. Simmons begins her term of
22 supervised release. *Id.*, Ex. B at 2. Nevertheless, if Ms. Simmons wishes to argue that her debt to
23 the United States is not yet due and that therefore her settlement payment should not be offset, she
24 must first exhaust her administrative remedies as to that issue.

25 The Court is sympathetic to the difficulty Ms. Simmons faces in representing herself and
26 performing legal research while under home confinement restrictions. However, this difficulty
27 does not render the settlement agreement unenforceable or suggest that the United States failed to
28 comply with its terms.

1 The Court concludes that the United States has fulfilled its obligations under the settlement
2 agreement in so far as it has provided the agreed upon settlement payment in the amount of \$2,500
3 to Ms. Simmons, subject to an offset. The United States acknowledges that Ms. Simmons has the
4 right to challenge the offset and observes that she has taken some steps to do so. Ms. Simmons
5 does not dispute that she must first exhaust administrative remedies with the U.S. Attorney’s
6 Office for the Northern District of Texas before seeking relief in district court. *See, e.g., United*
7 *States v. Harrison*, No. 3:94-CR-428-D, 2007 WL 2332662, at *2 (N.D. Tex. Aug. 16, 2007)
8 (holding that restitution debtor challenging the government’s ability to collect the debt through
9 offset must present those arguments “to the Department of Justice, not to the court”).
10 Accordingly, Ms. Simmons may not challenge the validity of the offset here in the first instance.

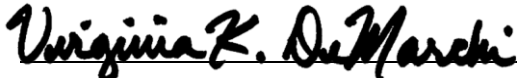
11 **IV. CONCLUSION**

12 For the foregoing reasons, the United States’ motion to dismiss is granted. The action is
13 dismissed without prejudice. If Ms. Simmons wishes to challenge the application of the \$2,500
14 settlement payment to the restitution she owes, she must first exhaust administrative remedies.

15 The Clerk of the Court shall close the file.

16 **IT IS SO ORDERED.**

17 Dated: February 26, 2021

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20 VIRGINIA K. DEMARCHI
21 United States Magistrate Judge
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