

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Senior Judge Wiley Y. Daniel**

Civil Action No. 14-cv-01068-WYD-NYW

LISA MITCHELL,  
J.R.M., by and through her next friend William Montez,  
SU. M., by and through his next friend Richard Murray,  
SA. M., by and through his next friend Michael LaJoie, and  
T.L., by and through his next friend Lorraine Ortega,

Plaintiffs,

v.

CINDY HOWARD,  
SHERRI BACA, and  
EL PUEBLO BOYS AND GIRLS RANCH, INC.,

Defendants.

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**ORDER AFFIRMING AND ADOPTING THE RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

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I. INTRODUCTION

THIS MATTER is before the Court on the following filings: (1) Plaintiffs' Motion to Set Aside Settlement (ECF No. 63), filed August 13, 2015; (2) Defendant Cindy Howard's Motion to Enforce Settlement Agreement (ECF No. 74), filed August 19, 2015; (3) Magistrate Judge Wang's Recommendation ("Recommendation") (ECF No. 200), filed January 25, 2016; and (4) Defendant Howard's Partial Objection to Recommendation of United States Magistrate Judge (ECF No. 205), filed February 5, 2016.

After carefully considering all pleadings, evidence, and arguments presented by the parties, Defendant Howard's objections are overruled and Magistrate Judge Wang's

Recommendation is affirmed.

## II. DISCUSSION

Since Defendant's objections were timely filed, I conduct a *de novo* review of Magistrate Judge Wang's conclusions to which objection is made since the nature of the matter is dispositive. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). As to the portion of Magistrate Judge Wang's Recommendation where no objection was filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."<sup>1</sup> See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

In the Recommendation, Magistrate Judge Wang recommends that Plaintiffs' Motion to Set Aside Settlement Agreement be granted and Defendant Howard's Motion to Enforce Settlement Agreement be denied. In formulating her Recommendation, Magistrate Judge Wang held an evidentiary hearing and engaged in a detailed fact finding analysis of the purported settlement negotiations that occurred in this case. After

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<sup>1</sup> Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

a thorough review, Magistrate Judge Wang concluded that the “settlement agreement not be enforced because Ms. Ruttenberg (Plaintiffs’ counsel) did not have authority to compromise, settle, or consent to a final disposition on behalf of Samuel Mitchell, and in the alternative, any implied authority to settle had been revoked prior to the attorneys reaching agreement on essential terms.” (Recommendation at 10). No objection was made to this portion of the Recommendation. Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record, and I agree with Magistrate Judge Wang that the settlement agreement should not be enforced as to Plaintiff Samuel Mitchell.

Also in her Recommendation, Magistrate Judge Wang noted that because she found

that Ms. Ruttenberg’s lack of authority from Samuel Mitchell to settle is dispositive of the issue regarding enforceability of the settlement reached by counsel, this court does not reach the more complicated issue of whether Ms. Ruttenberg had authority from Ms. Mitchell to settle her portion of her single claim against Defendant Howard. The court simply notes that there is no evidence in the record that Ms. Mitchell ever specifically agreed that settlement could include a non-admission of liability on the part of Defendant Howard [#159 at 9] and as of August 8, 2015, when the attorneys were agreeing to the form of settlement, including dismissing Samuel Mitchell and settling solely with Ms. Mitchell [#152-3 at 1], the relationship between Ms. Ruttenberg and Ms. Mitchell had deteriorated to such a degree [#153-2 at 1-4] that this court cannot conclude that Ms. Ruttenberg had authority to bind even Ms. Mitchell to different, material terms by that time. [#159 at 9; #156 at 74:11-18].

(Recommendation at 14 n.8). Defendant Howard objects to this portion of the Recommendation that the settlement agreement be set aside with respect to Plaintiff Lisa Mitchell.

“A trial court has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it.” *Shoels v. Klebold*, 375 F.3d 1054, 1060 (10th Cir. 2004) (quoting *United States v. Hardage*, 982 F.2d 1491, 1496 (10th Cir. 1993)). “Issues involving the formation and construction of a purported settlement agreement are resolved by applying state contract law.” *Id.* (citing *United States v. McCall*, 235 F.3d 1211, 1215 (10th Cir. 2000)). In Colorado, “[i]n order for a settlement to be binding and enforceable, there must be a ‘meeting of the minds’ as to the terms and conditions of the compromise and settlement.” *H.W. Houston Constr. Co. v. District Court*, 632 P.2d 563, 565 (Colo. 1981). “[T]he evidence must show that the parties agreed upon all essential terms.” *I.M.A., Inc. v. Rocky Mountain Airways, Inc.*, 713 P.2d 882, 888 (Colo. 1986).

Under Colorado law, the essential elements of a contract include “mutual assent to an exchange, between competent parties, with regard to a certain subject matter, for legal consideration.” *Indus. Prod. Int’l v. Emo Trans., Inc.*, 962 P.2d 983, 988 (Colo. Ct. App. 1997) (citation omitted). “An offer is a manifestation by one party of a willingness to enter into a bargain [and a]n acceptance is a manifestation of assent to the terms of the offer.” *Id.* (citing Restatement (Second) of Contracts §§ 24, 32 (1979)).

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* the portion of the Recommendation to which Defendant Howard objects and I have considered carefully the Recommendation, the objection, and the applicable case law. In the Recommendation, Magistrate Judge Wang explains that although she need not reach the issue of whether Ms. Ruttenberg had the authority from Ms. Mitchell to settle her claim against Defendant Howard, the evidence does not support that Ms. Mitchell ever agreed

that a settlement could include a non-admission of liability. Furthermore, based on my careful review of the record, I believe there was a breakdown in communication between Ms. Ruttenberg and Ms. Mitchell such that I cannot conclude that Ms. Ruttenberg had authority to bind Ms. Mitchell to a settlement that included terms that were either not communicated to Ms. Mitchell or were different than what Ms. Mitchell believed to be to be the case. It is not clear whether there was a mutual assent by competent parties or that the parties agreed upon all essential terms. Thus, Magistrate Judge Wang did not err in determining that the settlement agreement should be set aside as to both Plaintiff Samuel Mitchell and Lisa Mitchell. I conclude that the arguments asserted by Defendant Howard in her objection are incorrect.

III. CONCLUSION

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Wang (ECF No. 200) is **AFFIRMED** and **ADOPTED**. Plaintiffs' Motion to Set Aside Settlement (ECF No. 63) is **GRANTED** and Defendant Cindy Howard's Motion to Enforce Settlement Agreement (ECF No. 74) is **DENIED**.

Dated: March 16, 2016

BY THE COURT:

/s/ Wiley Y. Daniel  
WILEY Y. DANIEL,  
SENIOR UNITED STATES DISTRICT JUDGE