**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LISA AND STEVEN URBANSKI, H/W INDIVIDUALLY AND AS PARENTS OF J.U., A MINOR

Plaintiffs,

v.

BAYADA HOME HEALTH CARE,

Defendant.

CIVIL ACTION NO. 3:14-cv-1508

(JUDGE CAPUTO)

**MEMORANDUM**

Presently before the Court is Plaintiffs' Motion to Enforce Settlement. (Doc. 19.) For the reasons that follow, the Motion will be denied.

**I. Background**

Plaintiffs commenced this action on April 16, 2014 in the United States District Court for the Eastern District of Pennsylvania. (Doc. 1.) Lisa and Steven Urbanski are the parents of J.U., a minor diagnosed with Partial Trisomy 16, which renders J.U. largely non-verbal. The Amended Complaint (Doc. 3) raises claims for damages stemming from the employment of Kyoni Nieves by Defendant Bayada Home Health Care ("Bayada"). According to the Amended Complaint, Ms. Nieves was an aide to J.U. for a period of time in 2012 and 2013, during which she accompanied J.U. to school and, among other things, assisted J.U. in the restroom. (Am. Compl. ¶¶ 15-16.) On January 21, 2014, Ms. Nieves was indicted for, *inter alia*, Conspiracy to Commit Sex Trafficking of Children by Force and Coercion, as well as other related charges. (*Id.* ¶ 20.) On June 14, 2014, Defendant filed a Rule 12(b) motion which, *inter alia*, challenged venue. (Doc. 8.) On June 30, 2014, the district court granted Defendant's motion in part, and the case was transferred to this Court. (Doc. 12.) On April 22, 2015, the Court granted Defendant's Rule 12(b) motion in part, dismissing Plaintiffs' claim for negligent hiring in Count II, but allowing the remaining claims to proceed. (Doc. 17.)

Thereafter, the parties engaged in limited discovery and began settlement discussions. (*See* Ex. B., Doc. 22.) On May 18, 2016, Plaintiffs, through their attorney Aaron Freiwald and paralegal Laura Laughlin,[1] advised Joann Drust, counsel for Defendant, that their settlement demand was $100,000. On May 31, 2016, Drust sent a letter to Laughlin inquiring into the medical records relating to Plaintiff Lisa Urbanski's two visits to the emergency room in April 2014 and requesting documents supporting any financial loss alleged in connection with these visits. At some point thereafter, it appears the parties engaged in additional settlement discussions, with Plaintiffs reducing their demand to $75,000 and Defendant offering $15,000, as indicated in Drust's September 20, 2016 email to Friewald.

In that same September 20, 2016 email, Drust inquired into whether any additional "special damages" supporting the settlement figure demanded by Plaintiffs had been obtained by Friewald. The email noted that Bayada offered to meet with the Urbanskis in person to continue settlement discussions if the parties were "unable to reach a mutually agreeable figure." A follow-up email from Drust that same day reiterated that Bayada sought evidence of additional damages in order to "get the number higher." Friewald responded via email that this "is not what we discussed," and that Drust had told Friewald she "would go back [to Bayada] and get 35K." On October 4, 2016, Laughlin emailed Drust in response to Drust's request for additional documentation supporting Plaintiffs' damages. The email included some additional documentation and requested that Drust inform Laughlin about Bayada's position with regards to the $35,000 settlement payment. On October 17, 2016, Drust replied to Laughlin and stated that Laughlin's email "is not very helpful as it doesn't really reference . . . anything connected to the event raised in the Complaint." Drust noted that "without more in the nature of any out of pocket or special damages, I will not be able to

[1] Defendant refers to Laughlin as a paralegal (Doc. 22, at 4), and Plaintiffs do not state her position.

argue for additional monies towards settlement." Laughlin responded to Drust's email on October 19, 2016, disagreeing with Drust's characterization of Laughlin's original email and requesting a time to speak over the phone.

On October 25, 2016, Friewald emailed Drust "following up" on a recent conversation between Drust and Laughlin. Friewald requested Drust to advise whether Bayada "is prepared to make good on our previous conversation and to resolve this case for $35,000." Friewald further stated: "If not, we need to resume immediately our discovery in this case. Not hearing from you, we will Notice the depositions immediately and will involve the court as needed to secure the discovery we need to prepare this case for trial." On October 26, 2016, Drust responded to Friewald's email, stating: "At this point, it seems that we have no choice but to proceed with mediation through the Court as agreed." Drust indicated again that she needed something "more in the way of actual damages" to present to Bayada, and that the documentation supplied thus far was "simply not enough." On the same day, Drust also emailed Laughlin, agreeing that a phone call "would be a good idea." (Ex. C., Doc. 22.) Drust noted that she had a meeting with Bayada scheduled for mid-November, but wanted "to schedule something [with Plaintiffs' counsel] before then."

Settlement discussions between counsel broke down thereafter. On November 3, 2016, Friewald emailed Drust after Drust apparently cancelled a conference call and had yet to reschedule. (Ex. C.) The email stated:

> We were to have a conference call on Tuesday. You [Drust] could not be available despite the fact that we had confirmed the date and time. I [Friewald] had to be the one to call your office to find out you would not be participating.
> I was told you would call yesterday to reschedule. That did not happen.
>
> I think at this point I have a right to be irritated.
>
> Moreover, you are dragging your feet here. This case should have been settled months ago, based on our prior conversations.
>
> This has become ridiculous and insulting and downright rude.
>
> I am preparing Notices of Deposition for all of the Bayada witnesses we intend to take testimony from, since you apparently cannot get things

together and moving on your end.

> Please don't look to me to extend professional courtesies with respect to scheduling as you have not extended any to us.

Later that day, Drust responded to Friewald's email. Drust suggested that the parties proceed to mediation rather than pursue depositions, considering that they had already notified the Court of their interest in mediation within the Middle District. Drust stated that, if Friewald preferred to "go straight to depositions," she would also prepare Notices for Friewald's clients and any other fact witnesses identified in the initial disclosure. Drust further requested that Friewald send her proposed dates for the depositions.

Friewald replied to Drust's email that "[t]here are two paths ahead and it really is up to you [Drust] and your client: We can settle the case according to the terms you and I discussed some while back. Or we can litigate the case. Mediation is no longer an option." Friewald also noted that "[y]ou [Drust] and I had a productive conversation about how to resolve this case and even got to a number. I [Friewald] got authority for that number on my end. You are re-neging." Friewald concluded by stating that he was sending out Notices of Depositions with dates of his choosing.

Drust responded to Friewald's email, acknowledging Friewald's decision to litigate rather than engage in mediation and stating she would inform Bayada of this decision. Friewald replied the next day, November 4, 2016, indicating that Drust should either speak with Bayada "to come up with the money you said would be available to settle this case or, if not, preparing for depositions." Drust responded that she would be "speaking with [her] clients on the 16th [of November] at which time we will once again review the damages which you have presented and which you believe support a $20,000 increase in the current settlement offer. Should you have additional information which you think may be relevant to that discussion (other than the costs of litigation argument already

made), please feel free to provide those to me in the interim."

On November 21, 2016, Drust emailed Friewald, informing that she had spoken with her clients the previous week "and the claims representative is interested in speaking with you [Friewald], directly." It appears the parties spoke by phone later that day.

On November 29, 2016, Karen Perrone, Bayada's manager of legal services, emailed Friewald, stating that Bayada was "agreeable to the $25,000, but can only offer $7,500 as a donation to the Urbanski's organization, Brighter Journeys." (Ex. A, Doc. 19.) Friewald responded that "[w]e spoke to our client and she accepts these terms to settle the case." Perrone responded that, "[w]e will draft the Release and I hope to send it to you this week." On December 13, 2016, Drust emailed Friewald the "proposed Settlement Agreement and Release." (Ex. E, Doc. 23.) This document contained a provision which stated: "URBANSKIS, including, without limitation, the Minor, J.U., by and through his Parents, Lisa and Steven Urbanski, hereby release and forever discharge BAYADA . . . from and against all actions . . . now known or unknown, arising out of or relating to the facts alleged in the pleadings or any act similar to those that are the subject of the Lawsuit[.]" (Ex. B, Doc. 19.) Drust noted that the proposed Settlement Agreement was "in PDF and Word form, for ease of editing," and requested Friewald to "add any language you believe is necessary to cover [the donation] continency." (Ex. E.) On December 27, 2016, Drust again emailed Friewald "checking in on the status of the Settlement papers." (Ex. D, Doc. 22.) On January 3, 2017, Drust followed up with Friewald once again "about the finalization of the papers needed to have this case discontinued and marked as settled in the Middle District." On January 4, 2017, Drust emailed Laughlin a draft stipulation for dismissal.

Some time thereafter, counsel for Plaintiffs informed Drust that they were

not releasing J.U.'s claims.[2] The parties dispute whether they had agreed to have J.U. release any claims he has or could have in the future in exchange for the settlement payment. Plaintiffs contend that J.U. was never a party to the lawsuit, no claims were ever brought on his behalf, and that waiving claims on behalf of J.U. was never part of the settlement negotiations. (Br. in Supp. Mot. to Enforce 9, Doc. 20.) In response, Defendant argues that release agreements often cover persons not named as parties to a lawsuit but, regardless, J.U. was a party in the underlying suit and, consequently, a party to the settlement agreement. (Br. in Opp'n 12-13, Doc. 23.) Attached to their Motion, Plaintiffs included a revised settlement and release agreement which omits the terms releasing J.U.'s claims. (Ex. C, Doc. 19.) Plaintiffs now move for the Court to enforce this revised agreement. (Mot. to Enforce ¶ 27, Doc. 19.)

**II. Legal Standard**

Settlement agreements are governed by the ordinary principles of contract law. *See In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 193 (3d Cir. 2000). "As with any contract, it is essential to the enforceability of a settlement agreement that 'the minds of the parties should meet upon all the terms, as well as the subject-matter, of the [agreement].'" *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999) (quoting *Onyx Oils & Resins, Inc. v. Moss*, 80 A.2d 815, 817 (Pa. 1951)). Under Pennsylvania law, the test for enforceability of an agreement is whether: (1) both parties have manifested an intention to be bound by its terms, and (2) the terms are sufficiently definite to be specifically enforced. *Channel Homes Ctrs., Div. Of Grace Retail Corp. v. Grossman*, 795 F.2d 291, 298-99 (3d Cir. 1986). "[A]n agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing." *Green v. John H. Lewis & Co.*, 436 F.2d 389, 390 (3d Cir.

[2] The Court has not been provided with any emails or other correspondence dated after January 4, 2017.

1970). However, "[e]ven when there is evidence of mutual assent, a settlement agreement does not constitute an enforceable contract if there are 'ambiguities and undetermined matters which render [the] settlement agreement impossible to understand and enforce.'" *Shell's Disposal & Recycling, Inc. v. City of Lancaster*, 504 Fed. Appx. 194, 202 (3d Cir. 2012) (quoting *Mazzella*, 739 A.2d at 537 (internal quotation marks omitted)); *see Riviello v. First Nat'l Cmty. Bank*, 2013 WL 1348259, at *1 (M.D. Pa. Apr. 3, 2013) ("If there are matters yet to be determined about the essential terms of a settlement, there is no agreement to enforce.") (citation omitted). Indeed, "[w]here parties exchange draft agreements that differ dramatically on their essential terms, the agreement is too ambiguous to be enforceable." *Columbia Gas Transmission, LLC v. 520.32 Acres*, 188 F. Supp. 3d 500, 507 (W.D. Pa. 2016) (citing *Shell's Disposal & Recycling, Inc.*, 504 Fed. Appx. at 202).

Motions to enforcement settlement agreements resemble motions for summary judgment. *See Tiernan v. Devoe*, 923 F.2d 1024, 1031-32 (3d Cir. 1991). "The court must treat all the non-movant's assertions as true, and 'when these assertions conflict with those of the movant, the former must receive the benefit of the doubt.'" *Leonard v. Univ. of Del.*, 204 F. Supp. 2d 784, 786 (D. Del. 2002) (quoting *Tiernan*, 923 F.2d at 1032). Therefore, generally courts "should not summarily enforce purported settlement agreements, in the absence of an evidentiary hearing, where material facts concerning the existence or terms of an agreement to settle are in dispute." *Intellisource Grp., Inc. v. Williams*, 1999 WL 615114, at *4 (D. Del. Aug. 11, 1999). However, "where essential issues of fact are lacking, and there is little likelihood that the settlement could be upheld, it is within the court's discretion to forego a hearing." *Foodserv. Mktg. Assocs., Inc. v. O'Keefe*, 2004 WL 1527687, at *1 (E.D. Pa. Mar. 2, 2004) (citing *Stewart v. M.D.F., Inc.*, 83 F.3d 247, 251-52 (8th Cir. 1996)). Indeed, "when 'the parties' counsel [are] the sole witnesses to their own conversations,' the court may properly determine whether a settlement exists by relying exclusively on the representations of counsel." *Chaganti & Assocs., P.C. v. Nowotny*, 470 F.3d 1215, 1223 (8th Cir. 2006) (quoting

*Stewart*, 83 F.3d at 251). Here, because "the only issue that is precluding the settlement in this matter is whether minor J.U. is a party to this litigation" (Reply Brief 1, Doc. 27; *see* Br. in Opp'n 12), the Court sees no basis for holding an evidentiary hearing which no party has requested.[3] *See O'Keefe*, 2004 WL 1527687, at *1.

**III. Discussion**

The parties appear to agree that the only issue precluding settlement is whether minor J.U. is a party to the underlying litigation. (*See* Br. in Opp'n 12; Reply Br. 1.) Plaintiffs argue that J.U. has never been a party to this lawsuit and, consequently, including him in the settlement release was never contemplated. (Br. in Supp. 9.) Defendant contends that J.U. is indeed a party to this action and, thus, a party to the settlement agreement. (Br. in Opp'n 12-13.) In the interest of judicial economy, the Court will clarify this issue despite the procedurally questionable decision to seek resolution of this dispute via a motion to enforce a settlement agreement.

Federal Rule of Civil Procedure 10(a) mandates that "[t]he title of the complaint must name all the parties[.]" *See also Blasingim v. Hill*, 2008 WL 11320088, at *2 (N.D. Ga. Sept. 8, 2008) ("Rule 10(a) of the Federal Rules of Civil Procedure expressly requires that the parties be fully identified in the pleadings. . . .") (internal quotation marks and citation omitted). Courts may also look to the body of the complaint to discern the identity of the parties. *See Saykin v. Donald W. Wyatt Det. Ctr.*, 2008 WL 2128059, at *2 (D.R.I. May 20, 2008) (citing cases). Additionally, Rule 17(c) requires a court to appoint a guardian ad litem to represent a minor or incompetent person, unless that person is represented. Generally, when a parent brings a lawsuit "on behalf" of his or her minor child and has similar interests as the minor, there is no need for a court to appoint a guardian ad litem, as the parent adequately represents the minor's interests. *See Burke v. Smith*, 252 F.3d 1260, 1264 (11th

---

[3] While Plaintiffs requested oral argument in their Reply Brief only if the Court needed additional information "on the limited issue of whether minor J.U. is a party to this action and, thus, should be impacted by the settlement agreement," neither party has requested an evidentiary hearing. (Reply Br. 3.)

Cir. 2001) (citing *Croce v. Bromley Corp.*, 623 F.2d 1084, 1093 (5th Cir. 1980)).

A review of the Amended Complaint (Doc. 3) makes clear that J.U. is a party to the lawsuit: J.U. is listed in the caption of the Amended Complaint; Lisa and Steven Urbanski are listed as suing both in their individual capacities and as the parents and natural guardians of their minor son, J.U. (Am. Compl. Caption, ¶ 2); J.U. is referred to as "minor-Plaintiff J.U." in multiple paragraphs in the body of the pleading[4] (*id.* ¶¶ 2, 34, 35, 36, 37, 38, 46, 47, 48, 49, 50, 66); J.U.'s citizenship is averred in this diversity action (*id.* ¶ 2); and the claims in Counts I and II expressly allege injuries suffered by "minor-Plaintiff J.U." as a result of Defendant's alleged negligence (*id.* ¶¶ 38, 50). Clearly, and contrary to Plaintiffs' assertions in their instant Motion, J.U. is a party to this action, represented by his parents who brought claims on his behalf.[5]

Nevertheless, the Court declines to enforce the settlement agreement proffered by Plaintiffs because there was never a requisite "meeting of the minds" on the issue of the release of J.U.'s claims.

On this issue, the Pennsylvania Supreme Court's decision in *Mazzella v. Koken* proves instructive. 739 A.2d 531 (Pa. 1999). In *Mazzella*, counsel for each party reached

---

[4] Additionally, the Amended Complaint refers to Lisa and Steven Urbanski as "Plaintiff parents," further demonstrating that J.U., as "minor-Plaintiff," was a distinct party to the lawsuit. (*See* Am. Compl. ¶ 28.)

[5] Subsequent to the filing of the Amended Complaint, the Court ruled on Defendant's Motion to Dismiss. (*See* Docs. 16 & 17.) In so doing, the Court dismissed Count II and determined that the Amended Complaint did not contain plausible allegations that J.U. suffered harm or was otherwise injured as a result of Defendant's alleged negligence. (*See* Doc. 16, at 8-9.) The Court denied Defendant's Motion with respect to the other Counts, based largely on a theory that these four claims "are predicated on Bayada's failure to hire properly trained and audited aides, and on the emotional distress that the plaintiffs have suffered as a result of the discovery that their son was not being cared by properly trained and thoroughly vetted aides." (Doc. 16, at 9.) Thus, because the Court concluded that Plaintiffs failed to plausibly allege a negligent act that caused non-speculative harm to minor-Plaintiff J.U. (*id.* at 8), the Court's ruling resulted in only the parent-Plaintiffs maintaining live claims at this stage of the litigation.

an agreement on "general conditions" of settlement and informed the court that a settlement had been negotiated. *Id.* at 533. Thereafter, counsel for plaintiff submitted a draft settlement agreement to opposing counsel that conformed to the general terms previously agreed to by the parties. *See id.* Subsequently, counsel for defendant made several revisions to the agreement and returned it to plaintiff's counsel for his signature. *See id.* at 534. Plaintiff's counsel refused to sign the revised agreement. *Id.* Thereafter, defendant's counsel filed a motion to enforce the settlement agreement, as unilaterally revised, claiming that the parties had agreed to the essential terms, and that the revisions "merely drafted and modified additional language to embellish the general conditions set forth in" the original agreement. *See id.* In response to the motion, plaintiff's counsel contended that the revisions to the agreement were "both major and material," and thus the revised draft did not embody a meeting of the minds between the parties. *Id.* at 535.

The Pennsylvania Supreme Court found that the draft agreement first sent by plaintiff's counsel was simply an offer, and the unilaterally revised agreement returned by defendant's counsel was a counteroffer, "the effect of which was to terminate the original offer." *Id.* at 538. Moreover, although the parties had reached a general understanding prior to penning their competing draft agreements, the court held that the parties had not reached an enforceable agreement because "there was no meeting of the minds with regard to a material term of the proposed agreement." *Id.*; *see also Reid v. Diversified Consultants, Inc.*, 2013 WL 5818886, at *4 (M.D. Pa. Oct. 29, 2013) (refusing to enforce a settlement agreement where "there was no meeting of the minds as to an essential term of the settlement, namely, whether there was a requirement that a written settlement agreement with a release and confidentiality clause had to be signed by Plaintiff before Defendant was required to begin making the monthly installment payments"); *O'Keefe*, 2004 WL 1527687, at *3-*4 (denying motion to compel partial settlement agreement when the parties' representatives failed to achieve a "meeting of the minds" as to a material term).

Here, the undisputed record indicates that the parties never achieved a meeting of the minds on the issue of whether J.U. was to be covered by the contemplated settlement

and release agreement. Indeed, the parties concede that throughout their settlement negotiations they never discussed the issue of including a release of J.U.'s claims in the agreement, presumably under conflicting impressions as to whether J.U. was a party to the lawsuit and, therefore, necessarily covered by any release. (Br. in Opp'n 5; Reply Br. 2.) As such, given the record presented, the Court concludes that the parties failed to achieve a meeting of the minds as to material terms of the agreement, which precludes its enforcement. *See Riviello*, 2013 WL 1348259, at *3. Moreover, the Court further finds that Plaintiffs' unilaterally revised agreement attached to the present Motion (Ex. C, Doc. 19), which Plaintiffs seek to enforce, is, at best, a counteroffer to Defendant's proposed Settlement Agreement and Release (Ex. E, Doc. 23), which Defendant clearly has not accepted. *See O'Keefe*, 2004 WL 1527687, at *3-*4.

Accordingly, the Court finds that there is no enforceable settlement agreement in place. Plaintiffs' Motion to Enforce will therefore be denied.

## IV. Conclusion

For the above stated reasons, Plaintiffs' Motion to Enforce (Doc. 19) will be denied.[6]

An appropriate order follows.

July 19, 2017
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

[6] Defendant's request for sanctions, raised in its Brief in Opposition, will also be denied.