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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONETTE L. VAZQUEZ, Plaintiff-Appellant, v. ALEJANDRO N. MAYORKAS, Secretary of Homeland Security (Transportation Security Administration), Defendant-Appellee.	Nos. 21-16026 21-16500 21-16624 22-15383 D.C. No. 3:18-cv-07012-JCS MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Joseph C. Spero, Magistrate Judge, Presiding

Submitted July 6, 2023**
San Francisco, California

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Tonette Vazquez appeals pro se from the district court's order enforcing a settlement agreement between Vazquez and Defendant Secretary of Transportation (Defendant) and the district court's orders denying Vazquez appointment of counsel

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and hearing transcripts. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's enforcement of a settlement agreement for abuse of discretion, and defer to any factual findings it made in interpreting the settlement agreement, unless they are clearly erroneous. *Parsons v. Ryan*, 949 F.3d 443, 453 (9th Cir. 2020). We review a district court's order denying appointment of counsel for abuse of discretion. *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981). We lack jurisdiction to review an issue if an event occurs during the pendency of the appeal that renders an issue moot. *Ctr. For Biological Diversity v. Lohn*, 511 F.3d 960, 963 (9th Cir. 2007). We affirm.

Vazquez, an African American-Latina mother who was breastfeeding at the time of her complaint, alleges that her employer, TSA, retaliated and discriminated against her on the basis of sex, race, color, national origin, and lactating status, and created a hostile work environment, while she was employed as a Transportation Security Officer. After being appointed pro bono counsel by the court, Vazquez reached an oral agreement to settle with Defendant at conference before Magistrate Judge Sallie Kim. A few days later, however, Vazquez emailed her attorneys that she decided to reject the settlement, and her counsel subsequently withdrew. Defendant filed a motion to enforce the settlement agreement, which the district court granted after two evidentiary hearings. The court denied Vazquez's requests

to be appointed a second set of pro bono counsel and her requests for proceedings transcripts.

Vazquez alleges that the district court erred when it granted the motion to enforce the settlement agreement because it is biased and she was unfairly disadvantaged because she did not have representation. She also argues that she should have been provided a second set of counsel and that she has not received accurate transcripts.

Vazquez implies in her brief that the district court erred in granting Defendant's motion to enforce the settlement agreement because she was under undue pressure to accept the offer and, therefore, did not authorize her attorneys at the time to accept the settlement offer orally in front of Judge Kim. A district court has the equitable power to enforce a settlement agreement—whether oral or written—in an action pending before it, though where material facts concerning the agreement are in dispute, the parties must be allowed an evidentiary hearing. *Callie v. Near*, 829 F.2d 890 (9th Cir. 1987); *Doi v. Halekulani Corp.*, 276 F.3d 1131, 1138 (9th Cir. 2002).

In the evidentiary hearings here, however, Vazquez has not demonstrated that she did not authorize her attorneys to accept the offer. An attorney has the authority to settle with express permission of their client. *Harrop v. W. Airlines, Inc.*, 550 F.2d 1143, 1145 (9th Cir. 1977). Though Vazquez claims she was under pressure to

accept, she has not evinced any specific evidence demonstrating that; conversely, her three former attorneys all offered credible testimony that Vazquez gave unambiguous consent to the settlement offer. Nor does Vazquez submit any specific evidence to show how the court was actually biased. *Greenway v. Schriro*, 653 F.3d 790, 806 (9th Cir. 2011). If Vazquez felt undue pressure to agree to the settlement, the record does not show it, and we must defer to the district court's interpretation, as it is not illogical, implausible, or without support in the record.

Vazquez submits that the district court erred by not appointing her a second set of pro bono counsel. However, as was repeatedly explained to Vazquez, litigants in civil cases generally have no right to appointed counsel, and it is within the district court's discretion whether to grant a request to appoint counsel. *U.S. v. 30.64 Acres of Land in Klickitat Cty.*, 795 F.2d 796, 801 (9th Cir. 1986); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). It does not abuse this discretion absent extraordinary circumstances, which may exist if petitioner has a likelihood of success on the merits and is unable to articulate her claims pro se in light of the complexity of the legal issues involved. *Id.* Vazquez was appointed counsel, and has not shown how the district court abused its direction by refusing to appoint counsel a second time. Though Vazquez has faced difficulty litigating her matter pro se, she has shown to be able to articulate her claims. Moreover, she does not have a likelihood of success on the merits, as any new counsel would likely arrive

at the same advice that her previous counsel had. In any case, the district court has broad discretion to appoint volunteer counsel, and Vazquez has not demonstrated that her case is one of extraordinary circumstances.

Finally, Vazquez contends that she still has not received correct, complete transcripts of several hearings. However, the record demonstrates that she has since received copies of both requested transcripts. Thus, this issue is moot, and this court lacks jurisdiction to decide it. *Ctr. For Biological Diversity v. Lohn*, 511 F.3d 960, 963 (9th Cir. 2007).

Vazquez appears to argue that this issue is not actually moot, as she continues to argue that the transcripts are inaccurate and/or incomplete. But, while a party may seek to correct any omissions or misstatements in the record, a court reporter's transcript is generally presumed to be correct and should not be disturbed unless some evidence more than mere allegations of error exist. *Bergerco, U.S.A. v. Shipping Corp. of India*, 896 F.2d 1210, 1214 (9th Cir. 1990). Vazquez mentions a few, unsubstantiated accusations of missing sections in the transcript, but these do not overcome the presumption that the transcript, certified by the court reporter, is correct.

AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TONETTE L. VAZQUEZ,

Plaintiff,

v.

ALEJANDRO MAYORKAS,

Defendant.

Case No. 18-cv-07012-JCS

ORDER GRANTING MOTION TO ENFORCE SETTLEMENT

Re: Dkt. No. 126

I. INTRODUCTION

Plaintiff Tonette Vazquez brought this action asserting discrimination and harassment claims against Defendant the Secretary of Transportation (the "Secretary") based on Ms. Vazquez's former employment with the Transportation Security Administration ("TSA"). The Secretary moves to enforce a settlement agreement placed on the record at a settlement conference before the Honorable Sallie Kim. The Court held multiple evidentiary hearings to hear testimony from Ms. Vazquez and her former pro bono attorneys. For the reasons discussed below, the Secretary's motion is GRANTED.[1]

II. BACKGROUND

Ms. Vazquez initially filed and pursued this case pro se. In December of 2019, the Court appointed pro bono counsel to represent her. *See* dkt. 65.

On June 23, 2020, the parties appeared for a judicial settlement conference before the Judge Kim. After negotiations that occurred off the record, the following exchange was placed on the record:

[1] The parties have consented to the jurisdiction of a magistrate judge for all purposes under 28 U.S.C. § 636(c).

> THE COURT: . . . . Counsel, make your appearances starting with Plaintiff's Counsel.
>
> MR. LOEB: Jonathan Loeb, Nisha Patel, and Charles Hsu of Dechert, LLP.
>
> THE COURT: Thank you. And Defense Counsel.
>
> MR. SAMPLES: This is Wes Samples, AUSA. And with me agency counsel Molly Denning.
>
> THE COURT: Thank you. So, Mr. Samples is going to state the terms of the settlement agreement and I'll ask if everyone agrees to them. Go ahead, Mr. Samples.
>
> MR. SAMPLES: So, this matter has been settled for $50,000. The parties intend to exchange a draft settlement agreement tomorrow which will be June 24th. And as a courtesy, the TSA will further follow up regarding the questions that plaintiff have posed regarding what the TSA does when someone calls the TSA and asks for a reference.
>
> THE COURT: Okay. Great. And so, Ms. Denning, does that reflect your understanding of the settlement agreement?
>
> MS. DENNING: Yes, Your Honor.
>
> THE COURT: Okay. And Mr. Loeb?
>
> MR. LOEB: Yes, it does, Your Honor.
>
> THE COURT: Okay. Thank you. Is that it? Great. Okay. I'm going to stop the recording.

June 23, 2020 Settlement Conference Tr. (dkt. 168).

Within weeks after the settlement conference, Ms. Vazquez's then-attorneys moved to withdraw as counsel. Dkt. 101. During an ex parte proceeding on that motion, the Court discussed the circumstances of the settlement conference with Ms. Vazquez and her attorneys.[2] Ms. Vazquez stated that she felt intimated by the attorneys and the settlement judge at the settlement conference, and was not comfortable expressing her concerns about the proposed settlement. She stated, however, "I agreed to the position that was going to be offered with the

[2] The Court previously ordered that ex parte proceeding unsealed based on Ms. Vazquez assertion that her attorneys acted without authorization, which waived attorney-client privilege as to whether her attorneys were authorized to enter a settlement on her behalf. *See* Order re Waiver of Privilege (dkt. 136) (citing *AT & T Mobility LLC v. Yeager*, No. 2:13-cv-0007-KJM-DAD, 2014 WL 6633374, at *5 (E.D. Cal. Nov. 21, 2014)).

other side." Aug. 21, 2020 Hr'g Tr. (dkt. 148) at 34:13–14. In an effort to understand Ms. Vazquez's explanation of her position, the Court stated, "you agreed to a settlement with them only because they shut you down," to which Ms. Vazquez responded, "Right." *Id.* at 36:10–13. Ms. Vazquez explained that she only disputed the settlement agreement some days later:

> MS. VASQUEZ: It was -- I don't even know how many days it was either. I think it was, like, maybe two or three days after [the settlement conference]. And I said, "I'm going to get the guts. I'm just going to tell them, no, I reject this." And I couldn't tell them why because -- I couldn't tell them why because I – I just said that -- you know, I told them also over the phone what was going on on the phone, but I didn't put it on an e-mail. . . .

Id. at 35:7–14.

After several months in which Ms. Vazquez unsuccessfully sought new attorneys, the Secretary filed a motion on March 26, 2021 to enforce the settlement agreement placed on the record by Judge Kim. Mot. (dkt. 126).

At a May 28, 2021 evidentiary hearing, Ms. Vazquez testified that she did not recall agreeing to a settlement or authorizing her attorneys to enter a settlement agreement. May 28, 2021 Hr'g Tr. (dkt. 153) at 21:23–23:29. She remembered "trying to say something, and [she] was quieted," *id.* at 22:24–25, and having been "spoken over when [she] was trying to say something," *id.* at 25:23–25. Ms. Vazquez remembered Judge Kim "saying something, and it was something about you have more time to think about this." *Id.* at 26:20–22. Ms. Vazquez felt that she was "railroaded" during the settlement conference, and testified that Judge Kim showed her other settlements that Ms. Vazquez did not feel were analogous to her case, but did not let her keep a copy of that information. *See id.* at 28:13–30:24. According to Ms. Vazquez, Judge Kim at one point did not let her speak, saying that she "already kn[ew] about that," when Ms. Vazquez had intended to tell Judge Kim something new that Judge Kim did not already know. *Id.* at 31:21–32:4. Ms. Vazquez did not remember at the May 28, 2021 hearing what she had intended to tell Judge Kim. *Id.* at 32:19–33:4. Ms. Vazquez repeatedly testified that she sent her attorneys an email after the settlement conference had concluded expressing her desire to reject the settlement. *E.g.*, *id.* at 33:20–34:16, 37:2–4, 43:25–44:13. At the conclusion of the May 28, 2021 evidentiary hearing, defense counsel requested a further evidentiary hearing with testimony from Ms.

Vazquez's former lawyers, as well as limited written discovery. *Id.* at 53:8–20.

On June 14, 2021, Ms. Vazquez filed a copy of certain emails she exchanged with her then-attorneys, including an email dated June 26, 2020—three days after the settlement conference—reading as follows:

> Good morning,
>
> I hope all is well.
>
> After considering this settlement, it is my opinion that I should NOT accept the $50,000 due to all of the harm that has been done to me. Therefore, we should be prepared to move to trial unless, a much acceptable offer is provided. After much consideration, this is my position and I reject the $50,000 offer,
>
> Thank you,
>
> Tonette Vazquez

Dkt. 144 at 3/7.

On October 19, 2021, the Court held a second evidentiary hearing to take testimony from Ms. Vazquez's former attorneys. Jonathan Loeb testified that he represented Ms. Vazquez from some time in 2019 until the Court granted his and his colleagues' motion to withdraw as counsel in 2020 based on irreconcilable differences. Oct. 19, 2021 Hr'g Tr. (dkt. 187) at 10:16–11:4. Mr. Loeb and his colleagues believed that Ms. Vazquez had reached a binding settlement at the June 23, 2020 settlement conference, where Mr. Loeb and his colleagues represented her, while "Ms. Vazquez decide that she did not want to go through with settlement." *Id.* at 11:7–12:7; *see also id.* at 25:19–26:20.

Mr. Loeb testified that multiple offers were exchanged at the settlement conference and Ms. Vazquez unambiguously rejected all offers by the Secretary until the final offer of $50,000. *Id.* at 12:14–13:16. The settlement conference concluded with Mr. Loeb "informing the Court and the Government that a settlement had been reached." *Id.* at 14:6–10. At some point shortly before or after the settlement was placed on the record, Ms. Vazquez and Judge Kim had a conversation where Ms. Vazquez was crying. *Id.* at 14:10–16. In Mr. Loeb's view, Ms. Vazquez "seemed to be extremely joyful and thanked everybody, the lawyers, the Judge, about concluding the mediation." *Id.* at 14:16–18. He testified that the agreement was orally placed on the record at

Ms. Vazquez's authorization, and that Ms. Vazquez never signed any written agreement. *Id.* at 26:21–25.

Mr. Loeb testified that before communicating to the Court that Ms. Vazquez accepted the offer of $50,000, he and his colleagues "had a quite long conversation" of thirty minutes or more with Ms. Vazquez regarding "the pluses and minuses of accepting the settlement," after which "Ms. Vazquez informed [them] that she wanted to accept the $50,000 offer." *Id.* at 15:1–7. Mr. Loeb did not recall the exact words that Ms. Vazquez used to accept the settlement, but characterized her acceptance as "unambiguous." *Id.* at 15:8–13. Mr. Loeb did not believe he "expressly said [to Ms. Vazquez], 'After this point you cannot change your mind,'" but he "did explain to her that it was going to be over when . . . we put it on the record with the Court." *Id.* at 18:13–24.

Mr. Loeb did not believe that Ms. Vazquez was pressured into accepting the settlement, and did not recall her telling him during the settlement conference that she felt "railroaded" by her attorneys, although she told him either at the settlement conference or at some earlier time "that [she] felt that [she] had been railroaded by the Government." *Id.* at 15:19–23, 21:11–23:1. On questioning by Ms. Vazquez, he did not recall Judge Kim telling Ms. Vazquez that she already knew what Ms. Vazquez was going to say, and he testified that in general, he did not perceive a need to intervene to ensure that Ms. Vazquez was heard, because Ms. Vazquez and Judge Kim "had an extremely long discussion before the settlement was entered." *Id.* at 23:8–22.

Mr. Loeb believed Ms. Vazquez was not included in the recorded portion of the videoconference where the settlement was placed on the record because "that was simply up to Judge Kim," and he did not know why Judge Kim did not include Ms. Vazquez. *Id.* at 17:25–18:6. Mr. Loeb recalled Ms. Vazquez rejecting the settlement days later, after "[s]he had a change of heart." *Id.* at 16:9–22.

Another of Ms. Vazquez's former attorneys, Nisha Patel, generally confirmed Mr. Loeb's testimony. *See id.* at 29:18–44:14. Like Mr. Loeb, Ms. Patel testified that the parties exchanged multiple offers during the settlement conference and that Ms. Vazquez rejected all offers leading up to the final $50,000 offer. *Id.* at 31:10–32:12. Ms. Patel described Ms. Vazquez's acceptance

of that offer as follows:

> I don't recall the exact language she used, but each of us -- Mr. Loeb, myself, and Mr. Hsu -- discussed in turn the pros and cons of accepting a $50,000 offer. And after we finished expressing our opinions, we asked Ms. Vazquez what her opinions were. And, at that point, what I recall is that she enthusiastically accepted.

Id. at 32:23–33:3. Ms. Patel did not believe Ms. Vazquez was pressured to accept the settlement, and testified that she only rejected it in her email days after the settlement was placed on the record. *Id.* at 33:4–20. In response to question by the Court as to whether she explained to Ms. Vazquez that the settlement would be binding if Ms. Vazquez accepted it, Ms. Patel testified:

> I don't recall ever discussing with Ms. Vazquez that the settlement agreement would be binding. I don't remember using those words. However, I do recall telling her that if she accepted the settlement, the case would be over.

Id. at 35:11–15.

In response to questioning by Ms. Vazquez, Ms. Patel acknowledged that Ms. Vazquez had expressed that she was uncomfortable with Judge Kim. *Id.* at 36:9–20. Ms. Patel did not know why Ms. Vazquez was not included in the final portion of the settlement conference where the agreement was placed on the record. *Id.* at 39:10–18.

Ms. Patel testified that after she and her colleagues had been granted permission to withdraw as counsel, she had conversations with Ms. Vazquez regarding the return of her file where Ms. Vazquez asserted that Ms. Patel had yelled at her, although Ms. Patel denied that she had in fact done so. *Id.* at 40:3–42:3.

The final attorney, Charles Hsu, provided testimony generally consistent with that of Mr. Loeb and Ms. Patel. *See id.* at 46:15–53:8.

III. ANALYSIS

A. Legal Standard

A decision from this district has explained the Court's power to enforce a settlement agreement as follows:

> District courts have the inherent power to enforce a settlement agreement in an action pending before it. See *TNT Marketing, Inc. v. Aaresti*, 796 F.2d 276, 278 (9th Cir. 1986). "The moving party has the

> burden of demonstrating that the parties formed a legally enforceable settlement agreement." *Woods v. Carey*, 2015 WL 7282749, *4 (E.D. Cal. Nov. 18, 2015). "The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). This is true even if the underlying cause of action is based upon a federal statute. *Woods*, 2015 WL 7282749 at *4. Thus, the Court applies California law "regarding formation and interpretation of contracts in determining whether a legally enforceable settlement agreement was reached." *Id.*

Madani v. Cty. of Santa Clara, No. 16-cv-07026-LHK, 2019 WL 402362, at *6 (N.D. Cal. Jan. 31, 2019). The Ninth Circuit has cautioned that "the district court may enforce only *complete* settlement agreements," and that "[w]here material facts concerning the *existence* or *terms* of an agreement to settle are in dispute, the parties must be allowed an evidentiary hearing." *Callie v. Near*, 829 F.2d 888 (9th Cir. 1987).

The Eastern District of California has addressed the standard for considering a purported oral settlement agreement—particularly where, as here, a further written agreement was contemplated but not completed:

> In California, an oral agreement may give rise to a binding contract. *Kreling v. Walsh*, 77 Cal. App. 2d 821, 834–35 (1947); *Khajavi v. Feather River Anesthesia Medical Group*, 84 Cal. App. 4th 32, 61–62 (2000). If two parties reach an oral agreement, that agreement may in some cases be enforced even if the parties expected a written agreement would follow. *Khajavi*, 84 Cal. App. 4th at 61–62. A negotiated oral agreement becomes binding, even when the parties expected to sign a written agreement, only if the oral agreement's terms are "definitely understood." *Id.* at 61 (quoting *Louis Lesser Enterprises, Ltd. v. Roeder*, 209 Cal. App. 2d 401, 404–05 (1962)); *see also Banner Entertainment, Inc. v. Superior Court*, 62 Cal. App. 4th 348, 358 (1998) ("[I]f the respective parties orally agreed upon all of the terms and conditions of a proposed written agreement with the mutual intention that the oral agreement should thereupon become binding, the mere fact that a formal written agreement to the same effect has not yet been signed does not alter the binding validity of the oral agreement."). On the other hand, no binding oral agreement exists if "the parties understood that the proposed agreement [was] not complete until reduced to formal writing and signed . . . ." *Khajavi*, 84 Cal. App. 4th at 61–62.

AT & T Mobility LLC v. Yeager, No. 2:13-CV-0007-KJM-DAD, 2014 WL 6633374, at *2 (E.D. Cal. Nov. 21, 2014). The Ninth Circuit has affirmed enforcement of oral settlement agreements placed on the record before a district court. *See generally, e.g., VACC, Inc. v. Davis*, 823 F. App'x 474, 475 (9th Cir. 2020); *Doi v. Halekulani Corp.*, 276 F.3d 1131 (9th Cir. 2002).

The Ninth Circuit has not clearly addressed whether state law or federal common law applies to the question of whether a lawyer appearing in federal court has authority to settle a case on behalf of a client, an issue that has divided other circuits. *See In re Clawson*, 434 B.R. 556, 570–71 (N.D. Cal. 2010) (citing decisions from the Second, Fifth, and Eighth Circuits applying federal common law with a presumption of authority, and decisions from the D.C. and Seventh Circuits applying state law). This Court finds persuasive the district court decisions from within this circuit that have addressed the split of authority and applied state law. *See Yeager*, 2014 WL 6633374, at *4–5; *Anand v. Cal. Dep't of Developmental Servs.*, 626 F. Supp. 2d 1061, 1064–67 (E.D. Cal. 2009); *see also Madani*, 2019 WL 402362, at *9 (asserting that state law applies, without addressing out-of-circuit authority to the contrary).[3] The Court therefore applies California law to the question of whether Ms. Vazquez's then-attorneys had authority to enter a settlement agreement at the June 23, 2020 settlement conference.

In California, "the law is well settled that an attorney must be specifically authorized to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise settlement of pending litigation." *Whittier Union High Sch. Dist. v. Superior Ct.*, 66 Cal. App. 3d 504, 508 (1977). "When a client claims an attorney settled without authority, the court must take evidence on which to base a factual determination." *Clawson*, 434 B.R. at 571 (citing *Bice v. Stevens*, 160 Cal. App. 2d 222, 232–33 (1958)). "Under [Ninth] Circuit precedent, this factual inquiry must take the form of an evidentiary hearing, . . . where plaintiff must bear the burden to show that her previous attorney did not have her authority to settle her claims or that she should not otherwise be bound by her attorney's acts through her subsequent ratification." *Anand*, 626 F. Supp. 2d at 1067 (citing *Callen v. Penn. R.R. Co.*, 332 U.S. 625 (1948); *Callie*, 829 F.2d at 890).

B. The Parties' Oral Agreement Is Complete

At the conclusion of the settlement conference, Judge Kim asked the parties to "state the terms of the settlement agreement." June 23 Settlement Conference Tr. at 3:13–14. Defense

[3] Here, the Secretary asserts that California law governs the issue, Reply at 2–3, and has not argued that a presumption of authority under federal common law should apply.

counsel, Assistant United States Attorney Wesley Samples, stated:

> So this matter has been settled for $50,000. The parties intend to exchange a draft settlement agreement tomorrow, which will be June 24th. And as a courtesy, the TSA will further follow up regarding the questions that Plaintiff had posed regarding what the TSA does when someone calls TSA and asks for a reference.

Id. at 3:16–21. Mr. Loeb and an attorney from the TSA confirmed that Mr. Samples's statement reflected their understanding of the settlement. *Id.* at 3:22–4:1.

That exchange reflects something close to the minimum necessary to establish a complete settlement agreement. While the three attorneys did not state specifically that the agreement called for the case to be dismissed, the undisputed statement that the "matter *has been settled* for $50,000," *see id.* at 3:16–17 (emphasis added), does not leave room for any other reasonable interpretation. And while the oral agreement placed on the record contemplated a future written settlement agreement, that does not negate its effectiveness so long as "the oral agreement's terms are 'definitely understood.'" *Yeager*, 2014 WL 6633374, at *2 (quoting *Khajavi*, 84 Cal. App. 4th at 61); *see also VACC*, 823 F. App'x at 476–77 (recognizing an oral settlement agreement as binding despite its contemplation of a written agreement that was never completed).

To the extent there is any ambiguity as to the terms of the agreement recited on the record, it is dispelled by Ms. Vazquez's former attorney Mr. Loeb's testimony, which the Court finds credible:

> [Question by Mr. Samples:] And what were the terms of the settlement agreement that you reached that day, June 23rd, 2020?
>
> [Answer by Mr. Loeb:] Right. There weren't a lot of terms. The Government was to pay Ms. Vazquez $50,000 in exchange for a release.

Oct. 19, 2021 Hr'g Tr. at 14:19–22. The parties' agreement that the case "ha[d] been settled," *see* June 23 Settlement Conference Tr. at 3:16–17, as well as Ms. Patel's testimony that she understood and explained to Ms. Vazquez that "the case would be over" if Ms. Vazquez accepted the Secretary's offer, Oct. 19, 2021 Hr'g Tr. at 35:14–15, indicate that the parties understood that even though they contemplated a future written settlement agreement, their oral agreement was definite and effective.

While Ms. Vazquez has argued that she did not herself agree to the terms of the settlement—a separate issue discussed below—she has not argued that the terms stated on the record and agreed by counsel were anything less than a complete and definite settlement agreement. *See generally* Opp'n (dkt. 128); Oct. 19, 2021 Hr'g Tr. at 57:20–62:25 (closing argument). The Court concludes that the oral agreement between the attorneys on each side of this case was sufficiently definite and complete to be enforceable.

C. Ms. Vazquez Has Not Shown That Her Then-Attorneys Lacked Authority

Ms. Vazquez's primary contention, that she "did not agree with a settlement of $50,000.00," Opp'n at 3, amounts to an argument that she did not authorize her attorneys to bind her to the agreement they placed on the record at the settlement conference. Under California law, Ms. Vazquez has the burden to prove that lack of authority as a question of fact. *Anand*, 626 F. Supp. 2d at 1067.

Here, Ms. Vazquez's former attorney Ms. Patel testified that she explained to Ms. Vazquez that "the case would be over" if Ms. Vazquez accepted the $50,000 settlement offer, Oct. 19, 2021 Hr'g Tr. at 35:14–15, and all three of Ms. Vazquez's former attorneys who were present at the settlement conference testified that she accepted that offer, with Mr. Loeb and Ms. Patel characterizing her acceptance as unambiguous and enthusiastic, *id.* at 15:12–13, 33:2–3, 47:13–14. The Court finds that testimony to be credible. Ms. Vazquez's testimony does not clearly refute her attorneys' assertion that she accepted the offer. At the hearing on her attorneys' motion to withdraw, Ms. Vazquez appeared to concede that she accepted the offer, albeit under what she perceived as undue pressure. Aug. 21, 2020 Hr'g Tr. at 34:13–14, 36:10–13. To the extent any portion of Ms. Vazquez's testimony could be construed as stating that she did not accept the offer, the Court does not find such testimony credible.

Ms. Vazquez also has not substantiated her position that her attorneys or Judge Kim unduly pressured her to accept the settlement. The only specific example she has offered of any such pressure is an instance where Judge Kim purportedly told Ms. Vazquez that she already knew what Ms. Vazquez was going to say, during what Ms. Vazquez's attorney Mr. Loeb credibly described as a long and thorough conversation between Ms. Vazquez and Judge Kim regarding the

Secretary's offer to settle the case. The Court does not find that such an exchange negates Ms. Vazquez's decision to accept the offer, and is aware of no authority suggesting as much.

The Court finds credible Ms. Vazquez's testimony that she felt uncomfortable at the settlement conference, but that is not unusual. Judicial settlement conferences and other forms of mediation requires parties to consider high-stakes questions of whether to accept a somewhat less favorable outcome than they might ultimately obtain at trial in exchange for a final resolution of the dispute, and assurance against a *worse* outcome at trial. Those decisions are often difficult, even for sophisticated litigants and experienced attorneys. If a party's discomfort at a settlement conference or mediation were itself reason to disregard an agreement that party reached, few settlements would be able to provide the sort of assurance they are intended to.

This case is not a model example of a settlement. It is unfortunate, but likely unavoidable at least to some degree, that Ms. Vazquez felt uncomfortable at the settlement conference. It is not clear why Ms. Vazquez's attorneys apparently did not use the term "binding" to explain the nature of the Secretary's offer and Ms. Vazquez's decision to accept it, or why Ms. Vazquez was not included in the final portion of the settlement conference and asked to confirm her agreement on the record. The attorneys also could have been clearer in stating the terms of their agreement on the record.

Nevertheless, the Court concludes as a matter of fact that Ms. Vazquez authorized her attorneys to accept an offer of $50,000 after her attorneys explained that accepting the offer would end the case, and that after Ms. Vazquez granted that authority, her attorneys entered an oral agreement on her behalf to dismiss the case in exchange for that payment. Ms. Vazquez reached the decision to reject the settlement offer only days later, when she sent an email to her attorneys stating that decision. At that point, the agreement had been reached (with Ms. Vazquez's authorization) and it was too late for Ms. Vazquez to unilaterally withdraw from it. The Secretary's motion to enforce that agreement is therefore GRANTED.

IV. CONCLUSION

For the reasons discussed above, the Secretary's motion to enforce the parties' agreement to dismiss this case with prejudice in exchange for payment of $50,000 is GRANTED. The case is

hereby DISMISSED WITH PREJUDICE in accordance with the parties' agreement, and the Clerk shall enter a judgment of dismissal. The Secretary is ORDERED to pay Ms. Vazquez $50,000 no later than April 5, 2022. The Court retains jurisdiction to enforce the terms of that agreement.

The Secretary seeks an order requiring Ms. Vazquez to provide information, including a bank account number and her social security number, to facilitate payment. The Secretary has not identified any portion of the parties' agreement that requires Ms. Vazquez to do so, and the Court will not require her to provide such information if she has not agreed to. If Ms. Vazquez refuses to provide sufficient information to allow for a direct deposit or wire transfer, the Secretary may tender payment via check. That said, the parties are strongly encouraged to reach an agreement as to a method of payment.

If Ms. Vazquez intends to appeal this order, either or both parties may file a motion to stay the Secretary's obligation to pay Ms. Vazquez pending resolution of the appeal.

IT IS SO ORDERED.

Dated: February 22, 2022

JOSEPH C. SPERO
Chief Magistrate Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TONETTE L. VAZQUEZ,

Plaintiffs,

v.

ALEJANDRO MAYORKAS,

Defendants.

Case No.: 18-cv-07012-JCS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that:

(1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and

(2) On 2/22/2022, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Tonette L. Vazquez
460 Grand Avenue
#318
Oakland, CA 94610

Dated: 2/22/2022

Mark B. Busby
Clerk of Court, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to
the Honorable Joseph C. Spero

United States District Court
Northern District of California

FILED

AUG 9 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TONETTE L. VAZQUEZ,

Plaintiff-Appellant,

v.

ALEJANDRO N. MAYORKAS, Secretary of Homeland Security (Transportation Security Administration),

Defendant-Appellee.

No. 21-16026
21-16500
21-16624
22-15383

D.C. No. 3:18-cv-07012-JCS
Northern District of California, San Francisco

ORDER

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Appellant's petition for rehearing is **DENIED.**

Additional material from this filing is available in the Clerk's Office.