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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERLAN LYNELL DICEY,

Plaintiff,

v.

T. COBB, et al.,

Defendants.

No. 2:14-cv-2661 TLN CKD P

BERLAN LYNELL DICEY

Plaintiff,

v.

C. RAYNER, et al.,

Defendants.

No. 2:15-cv-0927 TLN CKD P

ORDER

I. Introduction

A settlement agreement was reached in both of these actions on June 19, 2017 after a settlement conference held before Magistrate Judge Kendall J. Newman. On July 26, 2017, after learning from counsel for defendants that plaintiff had refused to sign a stipulation of dismissal,

1 Judge Newman ordered plaintiff to show cause, within 10 days, for plaintiff's refusal. Pending  
2 now before the court are plaintiff's "Motion of Rejection of the 6/19/2017 Settlement  
3 Agreement." (ECF No. 73 in case number 2:14-cv-2661 TLN CKD P; ECF No. 43 in case  
4 number 2:15-cv-0927 TLN CKD P.) For the following reasons, plaintiff's motions are denied.

5 II. Legal Standard

6 A district court has the inherent power to enforce a complete settlement agreement entered  
7 into while the litigation is pending before it. In re City of Equities Anaheim, Ltd., 22 F.3d 954,  
8 957 (9th Cir. 1995); Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987). This enforcement power  
9 extends to oral agreements. Doi v. Halekulani Corp., 276 F.3d 1131, 1138 (9th Cir. 2002). The  
10 moving party has the burden of demonstrating that the parties formed a legally enforceable  
11 settlement agreement. In re Andreyev, 313 B.R. 302, 305 (B.A.P. 9th Cir. 2004) (citing 15A Am.  
12 Jur. 2d Compromise and Settlement § 57 (2000)).

13 "The construction and enforcement of settlement agreements are governed by principles  
14 of local law which apply to interpretation of contracts generally." Jeff D. v. Andrus, 899 F.2d  
15 753, 759 (9th Cir. 1989). Therefore, even though the underlying cause of action presented in this  
16 litigation is based upon a federal statute, this court applies California law regarding the formation  
17 and interpretation of contracts in determining whether a legally enforceable settlement agreement  
18 was reached. United Commercial Ins. Serv., Inc. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir.  
19 1992); see also Harrop v. West. Airlines, Inc., 550 F.2d 1143, 1145 (9th Cir. 1977) (applying  
20 California law).

21 In California, oral settlement agreements made before the court and oral contracts are  
22 enforceable. Cal. Civ. Proc. Code § 664.6; Cal. Civ. Code § 1622. "The essential elements of a  
23 contract are: [1] parties capable of contracting; [2] the parties' consent; [3] a lawful object; and  
24 [4] sufficient cause or consideration." Lopez v. Charles Schwab & Co., Inc., 13 Cal. Rptr. 3d  
25 544, 548 (Cal. Ct. App. 2004) (citing Cal. Civ. Code § 1550). "Mutual assent usually is  
26 manifested by an offer communicated to the offeree and an acceptance communicated to the  
27 offeror." Id. (citing Cal. Civ. Code § 1565). The existence of mutual consent is determined by  
28 objective criteria; the "parties' outward manifestations must show that the parties all agreed 'upon

1 the same thing in the same sense.” Weddington Prod., Inc., v. Flick, 71 Cal. Rptr. 2d 265, 277  
2 (Cal. Ct. App. 1998) (quoting Cal. Civ. Code § 1580).

3 III. Facts

4 A settlement agreement was reached in both of these actions on June 19, 2017 after a  
5 settlement conference held before Magistrate Judge Kendall J. Newman. The terms of the  
6 settlement were recited on the record, and the undersigned has reviewed the transcript of that  
7 proceeding. ECF Nos. 72 and 42. Judge Newman ordered that the stipulation of dismissal be  
8 filed within 30 days.

9 Plaintiff argues that Judge Newman misled plaintiff into believing it is not possible for  
10 plaintiff to obtain as relief in 2:15-cv-0927 the expungement of the prisoner disciplinary  
11 proceeding finding in case number FD-11-02-001 by indicating relief would be barred by the  
12 United States Supreme Court’s decision in Heck v. Humphrey, 512 U.S. 477 (1994).<sup>1</sup>

13 As background, although plaintiff requested that a rules violation report (“RVR”) be  
14 withdrawn as a part of the settlement agreement, the defendants would not include that provision.  
15 As Judge Newman explained during the recitation of the settlement terms on the record, “The  
16 agreement is that [the RVR] won’t be withdrawn as part of the settlement. I just want to get that  
17 on the record as well so there’s not later an argument that you thought it was being withdrawn.  
18 It’s not being withdrawn.” Id. at 7. Judge Newman then inquired, “Mr. Dicey, have I accurately  
19 stated the material terms as you understand them?” Plaintiff responded, “Yes, sir.” At the  
20 conclusion of the proceedings, Judge Newman admonished plaintiff, “It is not a basis to refuse to  
21 sign those documents or to seek to set aside the settlement a week from now, a month from now,  
22 six months from now because you’ve had second thoughts...You understand we’ll have a  
23 settlement as of now, sir.” Plaintiff replied, “I do understand.” Despite plaintiff’s assurances, he  
24 now wishes to revisit the terms of the settlement. Plaintiff will not be permitted such second-

25 \_\_\_\_\_  
26 <sup>1</sup> To the extent plaintiff takes issue with Judge Newman indicating to plaintiff that counsel for  
27 defendants would not include expungement as a part of the settlement agreement, whether  
28 expungement would occur as a part of the actual settlement agreement was entirely counsel for  
defendants’ prerogative. Judge Newman had no authority to force expungement as a term of  
settlement.

1 guessing.

2 First, the court notes that plaintiff's complaint in 2:15-cv-0927 does not include a claim  
3 for injunctive relief. Thus despite plaintiff's arguments to the contrary, even if this court were to  
4 set aside the settlement, expungement of the RVR would not be available as a remedy.

5 Second, if plaintiff had any good conduct sentence credits revoked as a result of the  
6 finding the RVR, any request for expungement would be precluded by Preiser v. Rodriguez, 411  
7 U.S. 475, 500 (1973) in which the Supreme Court held that any challenge to the length of a  
8 prisoner's sentence had to be maintained in a petition for writ of habeas corpus. If plaintiff did  
9 not have any good conduct sentence credits taken away, or if the credits taken away were later  
10 restored, expungement would not be a possible remedy unless the prisoner disciplinary  
11 proceedings finding subjected plaintiff to "atypical and significant hardship . . . in relation to the  
12 ordinary incidents of prison life." Sandin v. Connor, 515 U.S. 472, 484 (1995). Plaintiff's  
13 complaint does not present facts suggesting he was subjected to "atypical and significant  
14 hardship" as a result of the RVR.

15 In light of the foregoing, and the remainder of the record before the court, there is no basis  
16 to set aside the settlement agreement reached by the parties on June 19, 2017.

17 IV. Conclusion

18 Good cause appearing, plaintiff's request that he be granted permission to withdraw from  
19 the settlement agreement concerning these two actions will be denied. Plaintiff will be given one  
20 more opportunity to sign all disposition documents including the stipulation of dismissal. If  
21 plaintiff refuses to sign the required documents, the court will entertain a motion to enforce the  
22 settlement.

23 IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's motions to reject the settlement (ECF No. 73 in case number 2:14-cv-2661  
25 TLN CKD P; ECF No. 43 in case number 2:15-cv-0927 TLN CKD P) are denied.
- 26 2. Plaintiff is granted an additional 21 days to sign all dispositional documents, including  
27 the stipulation of dismissal.
- 28 3. Counsel for defendants shall file the stipulation for dismissal within 30 days. If

1 defendants do not obtain the required documents for dismissal from plaintiff within 21 days,  
2 defendants may move for enforcement of the settlement agreement, and any other sanctions  
3 appropriate under the law.

4 Dated: August 28, 2017



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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