

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re Mirapex Products Liability Litigation

Case Nos. 07-MD-1836 (MJD/FLN)

Mary & Joesph Magalhaes
Maria & Todd Hoover
Patrick Klee
Ashraf Manji
Dianna & Robert Rendon

11-CV-412
11-CV-1061
11-CV-1210
11-CV-1767
11-CV-2094

Plaintiffs

v.

**REPORT AND
RECOMMENDATION**

Boehringer Ingelheim Pharmaceuticals, Inc.,
Pfizer, Inc. et al,

Defendants.

H. Lee Thompson for Plaintiffs
Scott Smith for Defendant Boehringer Ingelheim Pharmaceuticals, Inc.
Joseph Price for Defendant Pfizer, Inc.

THIS MATTER came before the undersigned United States Magistrate Judge on Defendants' motion to enforce settlement agreements (ECF No. 1719 for 07-md-1836) on July 30, 2012. This matter was referred to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons set forth below, the Court recommends that the motion be **GRANTED**.

I. BACKGROUND

On March 2, 2012, Lee Thompson, counsel for Plaintiffs, emailed counsel for Defendants a settlement demand on behalf of 18 of his clients, including those subject to this motion—Magalhaes, Hoover, Klee, Manji, and Rendon. *See* Liederman Aff., Ex. 4 (filed under seal), ECF No. 1722 for 07-md-1836. The demand listed specific settlement amounts for each client. *Id.*

Defendants accepted all 18 demands by reply e-mail dated March 7. *Id.* Ex. 5 (filed under seal). A day later, Defendants sent Thompson individual letters acknowledging each settlement. Liederman Aff. ¶ 14.

II. ANALYSIS

Defendants move to enforce the settlement agreements as to Magalhaes, Hoover, Klee, Manji, and Rendon.¹ In response, those plaintiffs contend that no settlement was reached.

A. Defendants' acceptance of Thompson's March 2 offer created a valid contract.

"Settlement agreements are governed by basic principles of contract law."² *Sheng v. Starkey Labs., Inc.*, 53 F.3d 192, 194 (8th Cir. 1995) (applying Minnesota law). A valid contract requires the communication of a specific and definite offer, acceptance, and consideration. *Pine River State Bank v. Mettelle*, 333 N.W.2d 622, 626-27 (Minn. 1983). "An offer is the manifestation of a willingness to enter a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Jackson v. Fed. Reserve. Emp. Benefits Sys.*, 2009 U.S. Dist. LEXIS 83842 at *14 (D. Minn. June 19, 2009), *adopted*, 2009 U.S. Dist. LEXIS 59544 (D. Minn. Jul. 13, 2009) (quoting Restatement (Second) of Contracts § 24).

The Court issued an order in November 2011 requiring Thompson to send a "written

¹ The parties agree that the Court has the inherent authority to enforce a settlement agreement in a case pending on the court's docket. *See* Def.'s Br. at 16, ECF No. 1721 for 07-1836; Pl.'s Br. at 6, ECF No. 54 for 11-412; *see also Jackson v. Fed. Reserve Empl. Benefits Sys.*, 2009 U.S. Dist. LEXIS 8342 at *4-5 (D. Minn. Jun. 19, 2009), *adopted*, 2009 U.S. Dist. LEXIS 59544 (D. Minn. Jul. 13, 2009).

² The parties agree that no substantive conflicts of law exist between Minnesota law and the law applicable in each of the litigant's jurisdictions. *See* Def.'s Br. at 7 n.1, ECF No. 1721 for 07-1836; Pl.'s Br. at 8, ECF No. 54 for 11-412. The parties further agree that Minnesota law applies to this dispute. *See* Def.'s Br. at 7; Pl.'s Br. at 8.

settlement demand” to Defendants after discussing with his clients the settlement value of each case. *See* ECF No. 1634, ¶ 7 for 07-md-1836. Given the Court’s order, it was reasonable for Defendants to believe that Thompson’s March 2 e-mail manifested a willingness to dismiss his clients’ claims in exchange for the sums listed in the demand. In other words, Thompson’s March 2 e-mail was a valid offer. Defendants accepted this offer by reply e-mail on March 7. An enforceable settlement agreement exists between Defendants and Magalhaes, Hoover, Klee, Manji, and Rendon.³ The terms of the agreement are as follows: Each plaintiff will release Defendants from any obligation arising out of the claims that gave rise to this lawsuit in exchange for the sums listed in Thompson’s March 2 demand. The settlement amounts are confidential,⁴ and the parties must comply with the Medicare Secondary Payer Act.⁵

B. Thompson possessed apparent authority to settle his clients’ claims.

Thompson argues that the no valid settlement agreement exists because he did not have actual authority to settle his clients’ claims for the amounts specified in the March 2 demand e-mail.⁶

³ At the hearing, Thompson suggested that the parties’ representations in their April 13 status report belie the existence of a contract. Nothing in that status report contradicts the Court’s finding that a contract exists between the parties. *See* ECF No. 1686 at 6 for 07-md-1836 (“Defendants assert that those cases [involving Hoover, Klee, Magalhaes, Manji, and Rendon] are settled. Defendants are willing to provide copies of the written settlement demands and written acceptances thereof to the Court under seal for its *in camera* review if necessary.”)

⁴ The terms of every settlement agreement in this Mirapex Multi-District Litigation have been made confidential. *See* Restatement (Second) of Contracts § 221 (agreements may be supplemented by usage).

⁵ The parties’ compliance with the Medicare Secondary Payer Act is a statutory obligation, not a contractual one. *See generally* 42 U.S.C. §§ 1395y et seq.

⁶ The Court expresses no opinion as to whether Thompson possessed actual authority to settle these clients’ claims.

“A principal is bound not only by an agent’s actual authority but also by authority that the principal has apparently delegated to the agent.” *Powell v. MVE Holdings, Inc.* 626 N.W.2d 451, 457 (Minn. Ct. App. 2001). Apparent authority exists where “a person of ordinary prudence conversant with business usages and the nature of the particular business is justified in assuming that such agent has authority to perform a particular act and deals with the agent upon that assumption” *Bergstrom v. Sears, Roebuck & Co.*, 532 F.Supp. 923, 933-34 (D. Minn. 1982). Minn. Stat. § 481.08 states that “An attorney may bind a client, at any stage of an action or proceeding, by agreement . . . made in writing and signed by such attorney.” Thompson’s March 2 e-mail qualifies as a signed writing. *See* Minn. Stat. § 325L.07; Minn. Stat. § 325L.02.

As Minn. Stat. § 481.08 expressly authorizes Thompson to settle his clients’ claims and as the Court previously ordered Thompson to meet with his clients to discuss the settlement value of each case, Defendants reasonably inferred that Thompson’s clients had delegated to him the authority to settle the cases for the amounts listed in his March 2 demand e-mail. In other words, Thompson possessed apparent authority to settle his clients’ claims. Thompson’s apparent authority is sufficient to bind Magalhaes, Hoover, Klee, Manji, and Rendon to their settlement agreements with Defendants.

III. RECOMMENDATION

Based on the foregoing, and all the files, records, and proceedings herein, it is **HEREBY RECOMMENDED** that:

1. Defendants’ motion to enforce the settlement agreement should be **GRANTED** (ECF No. 1719 for 07-md-1836).
2. The following cases should be **DISMISSED WITH PREJUDICE**:
 - a. Magalhaes, 11-CV-412;

- b. Hoover, 11-CV-1061;
 - c. Swenson [Klee only], 11-CV-1210;
 - d. Manji, 11-CV-1767; and
 - e. Rendon, 11-CV-2094.
3. The dismissal order should incorporate the material terms of the settlement agreement:
- a. Plaintiffs Magalhaes, Hoover, Klee, Manji, and Rendon shall dismiss their cases and release Defendants from any obligation arising out of the claims that gave rise to this lawsuit.
 - b. In exchange, Defendants shall pay Plaintiffs the sums listed in Exhibits 4 and 5 to the Liederman Affidavit.
 - c. The terms of the settlement agreement are to remain confidential.
4. The Court should enter judgment accordingly.

DATED: August 2, 2012

/s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **August 16, 2012**, written objections that specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **August 16, 2012** a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.