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 ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF ARIZONA

QWEST COMMUNICATIONS	)	
INTERNATIONAL, INC., a Delaware	)	No. CIV 04 271 TUC DCB
corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Michele Yontef, individually and d/b/a	)	
Telecom Consults Inc.	)	
	)	
Defendant.	)	

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**PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT**

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Plaintiff, Qwest Communications International, Inc., through their counsel hereby moves this Court to enforce the settlement agreement entered into between the parties. In support of its Motion, Plaintiff states as follows:

1. From July 2004 through January 2005, the parties' counsel in this matter engaged in discovery and settlement discussions. On July 23, 2004, counsel for Defendant wrote Plaintiff's counsel indicating that the Plaintiff was willing to settle the matter. See Exhibit A, settlement letter from Defendant's attorney Tony Chen.

2. After receiving the July 23, 2004 letter, Plaintiff Qwest made clear to Defendant and her attorney that it would not pay money to settle the case and instead offered to lengthen the

phase out period. See Affidavit of Kurt S. Lewis, ¶ 5. Thereafter an initial Settlement Agreement was drafted and sent via e-mail to Mr. Chen on October 19, 2004. See Exhibit B, Kurt Lewis e-mail to Tony Chen dated October 19, 2004, with attached initial Settlement Agreement.

3. Thereafter, the parties continued negotiations and on October 20, 2004 the Defendant rejected the initial Settlement Agreement. See Affidavit of Kurt S. Lewis, ¶ 7.

4. In response to this rejection, Plaintiff offered to revise the Settlement Agreement to include a longer phase out period in which the Defendant could continue to use the mark while transitioning to the use of a different mark. See Exhibit C, Kurt Lewis letter to Tony Chen dated October 21, 2004.

5. On December 13, 2004, counsel for Defendant e-mailed counsel for Plaintiff regarding revision of the Settlement Agreement and Defendant's agreement not to seek monetary compensation from the Plaintiff for settlement. See Exhibit D, Tony Chen e-mail to Kurt Lewis dated December 13, 2004, with attached Letter from Tony Chen.

4. On December 15, 2004, counsel for Plaintiff wrote counsel for Defendant regarding the proposed revisions and included a revised Settlement Agreement. See Exhibit E, Charlene Krogh e-mail to Tony Chen with attached letter from Kurt Lewis and revised Settlement Agreement. The letter indicated that Plaintiff accepted all of Defendant's proposed changes to the Settlement Agreement with the exception of four items.

5. On or about January 14, 2004 counsel for Plaintiff engaged in a telephone conversation with counsel for Defendant in which counsel for Defendant indicated that the Defendant agreed to the revised Settlement Agreement sent to Mr. Chen on December 15, 2004, with two minor changes. See Affidavit of Kurt S. Lewis, ¶ 10.

6. Thereafter two minor final changes were made to the Settlement Agreement including a clarification of a minor ambiguity regarding Defendant's ability to use "Ma Bell" on marketing materials during the two year phase out. Attached as Exhibit F is a redlined version of the final Settlement Agreement, showing the two minor changes made.

7. Thereafter, approximately two days prior to the Settlement Conference set for January 21, 2005, counsel for Defendant announced that she had changed her mind because she believed Qwest was going to be purchased by AT&T and AT&T was going to pay enormous dollars for the "Ma Bell" mark. Her counsel reported that she wanted "a piece of that money." See Affidavit of Kurt S. Lewis, ¶ 11.

8. On January 26, 2005, counsel for Plaintiff wrote a letter to Defendant's counsel regarding the Plaintiff's inappropriate attempt to back out of a completed Settlement Agreement. The January 26, 2005 letter is attached as Exhibit G.

9. Immediately thereafter on January 27, 2005, counsel for Plaintiff e-mailed the final Settlement Agreement to counsel for Defendant. The January 27, 2005 e-mail and final Settlement Agreement are attached at Exhibit H.

10. Counsel for Plaintiff has tried to resolve the matter since the final Settlement Agreement was e-mail to counsel for Defendant on January 27, 2005.

11. On March 2, 2005, counsel for Plaintiff learned that the Defendant is now representing herself. On March 2, Plaintiff contacted Richard Bear, general corporate counsel for Plaintiff, directly via telephone and left a voice message in which she indicated she was willing to settle, and was uncertain whether Qwest's "outside attorneys" had been forwarding settlement offers to the Plaintiff. This message was forwarded to counsel for Plaintiff by

Qwest's in-house counsel Christine Searls. A true and correct copy of the voice mail transcription is attached as Exhibit I; See Affidavit of Kurt S. Lewis, ¶ 15.

8. Qwest and its attorneys were led to believe that Michele Yontef had agreed to settlement of the case on the terms expressed in the final Settlement Agreement, Exhibit H. The parties did in fact come to a meeting of the minds on all terms; the only action left to be taken was execution by the parties.

9. Generally, where a client expressly authorizes an attorney to negotiate and enter into a settlement agreement, the attorney's action in doing so binds the client, regardless of whether the client has actually signed the documents that effectuate the settlement. *Hays v. Fischer*, 777 P.2d 222, 229 (Ariz.Ct.App. 1989); *Smith v. Washburn & Condon*, 297 P. 879 (1931) (where express authority is given, the attorney may compromise any matter, and his action in doing so is binding upon his principal.); *United Liquor Co. v. Stephenson*, 322 P.2d 886 (Ariz. 1958) (reversing decision to deny enforcement of settlement where lower court decision was based on finding that party did not understand the terms of the agreement, even though party had given authority to attorney to enter into agreement.)

10. It is clear in this case that the Defendant gave her attorney, Tony Chen, express authority to both negotiate for settlement on her behalf and enter into settlement on her behalf. Thus, her failure to actually sign the Settlement Agreement is of no consequence and she is bound by its terms.

11. Pursuant to Ariz.R.Civ.Pro. Rule 80(d), "no agreement or consent between parties or attorneys in any matter is binding if disputed, unless it is in writing, or made orally in open court..."

Settlement Agreement, Exhibit H and Defendant's assent to those terms by the December 13, 2004 letter from Chin and the revised settlement agreement with minor clarifications. *See Hays*, 777 P.2d at 230 (holding that, assuming Rule 80 applied, the letters between counsel were sufficient to memorialize a settlement agreement.).

16. Neither the existence of the Settlement Agreement nor its terms are in dispute. The only issue is whether the Defendant is bound by the Settlement Agreement. Counsel for Defendant had express authority to enter into an agreement with the Plaintiff for settlement of the matter. Pursuant to the case law above, Defendant's counsel's action in settling the matter binds the Defendant. This fact is not changed by the Defendant's mistaken belief that she may be in a better position to receive compensation from Qwest for settlement of the matter.

WHEREFORE, Plaintiff requests that this Court enter an Order enforcing the final Settlement Agreement between the parties and award the Plaintiff its attorneys' fees and costs in bringing this Motion.

A proposed Order is attached for the Court's consideration.

Respectfully submitted this <sup>24th</sup> ~~17th~~ day of March, 2005.

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AND