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EASTERN DISTRICT OF CALIFORNIA**

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM ROUSER,

Plaintiff,

No. CIV S-93-0767 LKK GGH P

vs.

THEO WHITE, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. On December 5, 1997, the parties entered into a settlement agreement. On March 23, 2004, the Honorable Lawrence K. Karlton ordered an evidentiary hearing regarding whether the settlement agreement has been breached. On April 7, 2004, this court set the evidentiary hearing for August 24, 2004. The court also ordered that thirty days prior to the hearing the parties were to file briefing addressing the issue of remedies.

In response to the April 7, 2004, order, on July 26, 2004, defendants filed a motion to vacate the evidentiary hearing. Defendants argue that pursuant to 28 U.S.C. § 3626(c), the court only has jurisdiction to reinstate the action if the settlement has been rescinded and is

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1 no longer in effect. Defendants argue that the court does not have jurisdiction to enforce the
2 settlement's terms or to order any other traditional remedy for breach of contract. Because the
3 settlement has not been rescinded, and plaintiff has asked the court to enforce the terms of the
4 agreement, defendants argue the court lacks jurisdiction to conduct the evidentiary hearing.
5 Defendants' reasoning is circular and fallacious.

6 Title 28 U.S.C. § 3626(c)(2) provides,

7 (2) Private settlement agreements.

8 (A) Nothing in this section shall preclude parties from entering into a
9 private settlement agreement that does not comply with the limitations on
10 relief set forth in subsection (a), if the terms of that agreement are not
11 subject to court enforcement other than the reinstatement of the
12 civil proceeding that the agreement settled.

11 (B) Nothing in this section shall preclude any party claiming that a private
12 settlement has been breached from seeking in State court any remedy
13 under State law.

13 In his March 23, 2004, order, Judge Karlton found that plaintiff was seeking
14 reinstatement of his action. March 23, 2004, order, p. 8: 13-15. Judge Karlton ostensibly further
15 found that the terms of the agreement went beyond § 3626(a), thus subjecting any breach to
16 reinstatement of the action. *Id.*, p. 8: 13-20.¹ Plaintiff has clearly indicated in his briefing
17 pursuant to court order that he desires to seek reinstatement of the action, and no other remedy.
18 Therefore, because defendants do not concede that a breach of the settlement has occurred, the
19 court is required to hold an evidentiary hearing in order to find a rescission of the settlement
20 agreement by virtue of defendants' conduct, and hence whether to find reinstatement is
21 appropriate.


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24 ¹ The undersigned uses the word "ostensibly" because the issue of whether the private
25 settlement in this case exceeded the parameters of § 3626(a) has not been raised. Judge Karlton
26 made his finding in the context of a discussion on the necessity of exhaustion of administrative
remedies. According to § 3626(c)(2), it is only private settlements which exceed the parameters
of subsection (a) that are limited to a reinstatement of action remedy. By parity of reasoning,
settlement agreements which match the requirements of subsection (a) may be fully enforced.

1 Defendants also argue that § 3626(c) provides that any breach of a private
 2 settlement agreement must be determined in state court before a party can seek reinstatement of
 3 his federal action. In support of this argument defendants cite York v. County of El Dorado, 119
 4 F. Supp. 2d 1106, 1109-10 (E.D. Cal. 2000). Nothing in § 3626(c) requires a state court to
 5 determine whether a private settlement has been breached before a party can seek reinstatement
 6 of his action in federal court. In York, a case in which a settlement was reached, but the court
 7 did not retain jurisdiction to enforce the settlement, the court observed that private settlements
 8 *may be enforced* in state court. 119 F. Supp. 2d at 1109. The Supreme Court has held that
 9 federal courts have ancillary jurisdiction to enforcement settlement agreements of actions where
 10 the terms of dismissal indicate that the court shall retain jurisdiction over the settlement.
 11 Kokkonen v. Guardian Life Ins. Co. Of Am., 511 U.S. 375, 381, 114 S. Ct. 1673, 1676 (1994).

12 Accordingly, IT IS ORDERED that defendants' July 26, 2004, motion to vacate
 13 the hearing date is denied.

14 DATED: August 3, 2004.

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 16 _____
 17 GREGORY G. HOLLOWS
 18 UNITED STATES MAGISTRATE JUDGE

18 ggh:kj
 19 rouser.ord

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mdk

United States District Court
for the
Eastern District of California
August 4, 2004

* * CERTIFICATE OF SERVICE * *

2:93-cv-00767

Rouser

v.

White

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 4, 2004, 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, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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