

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 15 2008

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

ARTHUR ELLERD, on his own behalf
and others similarly situated,

Plaintiff - Appellant,

v.

COUNTY OF LOS ANGELES, a
California municipality,

Defendant - Appellee.

No. 06-56417

D.C. No. CV-05-01211-SVW

MEMORANDUM*

TAMMY LE, on her own behalf and
others similarly situated,

Plaintiff - Appellant,

v.

COUNTY OF LOS ANGELES, a
California municipality,

Defendant - Appellee.

No. 06-56419

D.C. No. CV-05-04200-SVW

Appeal from the United States District Court
for the Central District of California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Stephen V. Wilson, District Judge, Presiding

Submitted April 11, 2008 *
Pasadena, California

Before: BEEZER, T.G. NELSON, and SILVERMAN, Circuit Judges.

Arthur Ellerd and Tammy Le appeal the district court's orders enforcing a settlement agreement between Ellerd, Le and the County of Los Angeles.

We have jurisdiction to review the district court's final orders enforcing the settlement agreement under 28 U.S.C. § 1291. *See Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704 (9th Cir. 1989). We review enforcement of a settlement agreement for an abuse of discretion. *See Doi v. Halekulani Corp.*, 276 F.3d 1131, 1136 (9th Cir. 2002). "Reversal is appropriate only if the court based its decision on an error of law or clearly erroneous findings of fact." *Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994) (quotation omitted).

The parties dispute whether federal or state law governs the determination that the parties reached an enforceable settlement. It is unnecessary for us to decide this issue because to the extent that federal and California law differ, the result is the same even under the law most favorable to Ellerd and Le.

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

Under both California and federal law, settlement agreements are unenforceable when an essential term is uncertain or undefined. *See Transamerica Equip. Leasing Corp. v. Union Bank*, 426 F.2d 273, 274 (9th Cir. 1970); *Lindsay v. Lewandowski*, 43 Cal. Rptr. 3d 846, 849 (Ct. App. 2006). Here, all of the material terms—such as the amount of the settlement—are sufficiently definite. The payout formula is a logistical detail on which there is no genuine disagreement in light of the County’s willingness to abide by any formula proposed by Ellerd and Le not inconsistent with the Terms of Settlement. No evidentiary hearing is required because there is no dispute over material terms. *See Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987).

Le argues that she is not bound by the Terms of Settlement because she did not personally sign it, only her attorney did. Under California law, the most favorable to Le’s position, the County has the burden to show that Le gave express authority to her lawyer, ratified the settlement, or executed the settlement herself. *See Blanton v. Womancare, Inc.*, 696 P.2d 645, 652 (Cal. 1985); *Jones v. Noble*, 39 P.2d 486, 489 (Ct. App. 1934). The County came forward with evidence from which an inference can be drawn that Le’s lawyer had the express authority to settle the case on her behalf. In response, Le presented a declaration stating that

she did not agree to the settlement. Conspicuously missing is any statement to the effect that her lawyer was not authorized to act on her behalf.

AFFIRMED.