UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

February 8, 2013

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 12A00049
CALIFORNIA MANTEL, INC., Respondent.	)	

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

This is an action arising under the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a (2006). The Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint in two counts against California Mantel, Inc. (CA Mantel or the company) alleging twenty-three violations of 8 U.S.C. § 1324a(a)(1)(B). Count I alleged that CA Mantel hired twenty-two named individuals for employment and failed to properly complete Forms I-9 for them. Count II alleged that the company hired one individual for whom it failed to prepare and/or present a Form I-9 upon request. CA Mantel filed an answer denying the material allegations of the complaint and pleading five affirmative defenses. Prehearing procedures were undertaken pursuant to which the parties filed their respective prehearing statements.

California Mantel subsequently notified this office by letter dated August 28, 2012, that the parties had reached a settlement and expected to finalize their paperwork in the next few weeks, after which they would file a Notice of Settlement. A previously scheduled telephonic case management conference was convened on September 21, 2012, at which time the parties nevertheless reported that they disagreed as to whether a settlement had actually been consummated. A schedule was established for additional filings, after which CA Mantel filed a Motion to Enforce Settlement Agreement. ICE filed a response in opposition and the motion is ripe for resolution.

II. THE MOTION AND RESPONSE

A. The Company's Position

CA Mantel's motion requests that OCAHO compel the government to honor a settlement agreement the company said was reached between the parties on August 27, 2012. The company asserts that after extensive negotiations the parties agreed that the case would be settled for $8000, and that each side would pay its own costs and fees. The parties also agreed that counsel for ICE would draft the agreement, that CA Mantel would make the payment on October 1, 2012, and that the precise mailing instructions for the payment would be sent to the company once the settlement was approved by this office. The motion says further that on August 27 the parties identified the individuals who would sign the settlement agreement on behalf of their respective parties. CA Mantel asserts that notwithstanding the consummation of the agreement, ICE subsequently proposed in September to insert new and additional provisions that had not previously been contemplated or discussed, and that ICE should not be permitted to repudiate the agreement the parties originally made.

The motion was accompanied by the declaration of Melanie Casey and the declaration of Cassandra M. Ferrannini with exhibits attached consisting of: A) the complaint; B) the answer; C) a chain of emails between Cassandra M. Ferrannini and Eileen Keenan, during the period from July 26, 2012 to July 31, 2012; D) an email to Ferrannini from Keenan dated August 23, 2012 at 10:22 a.m.; E) emails between Keenan and Ferrannini dated August 23, 2012 at 10:22 a.m., and 11:25 a.m., respectively; F) emails between Keenan and Ferrannini dated August 23, 2012 at 11:50 a.m. and 11:53 a.m., respectively; G) an email dated August 24, 2012 at 6:15 a.m. from Keenan to Ferrannini, with copies of previous emails; H) an email from Ferrannini to Keenan dated August 27, 2012 at 11:20 a.m. with copies of previous emails; I) an email dated August 27, 2012 at 12:40 p.m. with copies of previous emails; J) emails dated August 27, 2012 at 12:55 p.m. and 1:35 p.m., respectively; K) an email from Keenan to Ferrannini dated September 7, 2012 at 10:46 a.m. with attachments; L) Consent Findings; M) emails between Keenan and Ferrannini dated September 7, 2012 at 10:46 a.m. and 10:51 a.m., respectively; N) emails between Keenan and Ferrannini dated September 7, 2012 at 11:03 a.m. and 11:06 a.m., respectively.

B. The Government's Position

ICE first contends that this forum has no jurisdiction to enforce a settlement agreement, and that in any event no settlement agreement was ever finalized between the parties. The government contends that there were unresolved material issues and that no mutual understanding was reached as to two specific provisions of the agreement. ICE argues that the parties agreed on only one material term, the dollar amount of the settlement, but that they did not agree on other essential terms, making their agreement incomplete at best. It asserts that the government

intended, and also communicated to CA Mantel, "that any proposed settlement be reduced to a separate writing to be executed at a later time, including consent findings pursuant to section 68.14(a)(1)[1] of the regulations."

ICE's Exhibit A is the Declaration of Eileen C. Keenan, dated November 15, 2012.

III. THE NEGOTIATIONS BETWEEN THE PARTIES

The record reflects that the parties engaged in email communications in late July regarding ICE's E-Verify and IMAGE programs, and also made reference to discussions about settlement. Those discussions became more focused in late August, beginning with an email from the government's attorney, Eileen Keenan, to CA Mantel's attorney, Cassandra Ferrannini, on August 23 at 10:22 a.m., stating in pertinent part:

> Keenan: As we last left things, my client was willing to settle this case for $9,000 and your client was willing to settle for $7,000. I think that if we can agree to split the difference and settle at $8,000, then we might have a deal. My client does not want to settle for $7,000, but I think would be willing to do so for $8,000.
>
> I just called your office and was told that you were in a meeting. Please give me a call or shoot me an email and let me know what you think about this.

The company responded at 11:25 a.m. that same day, August 23.

> Ferrannini: I will take it back to them. They were pretty "final-final" on the $7K but I'll see what I can do. Are you confident your clients will be on board for $8K? I'm not sure I can get them to agree with just a "maybe" on the other side?

At 11:50 a.m. the government responded.

> Keenan: I have put in a call to my client to confirm that $8000 will seal the deal. I can tell you that $7000 will not.

[1] *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2012).

CA Mantel responded at 11:53 a.m.

> Ferrannini: I very much appreciate that -- thank you.

The next day, August 24, at 6:15 a.m., the government emailed the company.

> Keenan: I have spoken to my client and confirmed that they will settle for $8,000. Please let me know if this is agreeable to your client.

Thereafter on August 27, 2012, at 11:20 a.m., CA Mantel emailed the government.

> Ferrannini: My client is willing to pay $8000 to settle this matter, each side to bear its own fees and costs. Will you prepare an agreement?

At 12:40 p.m. the same day the government responded.

> Keenan: Great news, glad to hear it. Yes I will prepare the settlement agreement and the other documents that will need to be finalized. I should be able to get you the settlement agreement by Thursday.
>
> Is October 1, 2012 an acceptable due date for the fine? Note that the money will not be delivered to me or my client. Instead, your client will be served with paperwork that will detail the payment instructions, including the address where the money is to be sent.
>
> I need the names of two people who will sign the settlement agreement-typically it is the president and the general counsel. I am guessing that Melanie Casey and you will sign? What is Melanie Casey's title? Can you please inform the court that we have reached an agreement, we are finalizing the settlement paperwork and that we will serve the court with that paperwork? I just want the court to know so that they don't waste time scheduling a pre-hearing conference that will not be necessary.

At 12:54 p.m. on August 27 CA Mantel replied.

> Ferrannini: October first is fine so long as the payment information is received by then. Melanie is the CFO. Carye or I can sign re approve as to form. We will send a letter to the Court. If you need any further information, please let me know.

At 12:55 p.m. the government posed a question.

> Keenan: If I get you the settlement agreement by the end of the week, can you and Melanie both sign and get back to me the following week? That should give my client enough time to get the rest of the docs in order and served on CA Mantel with enough time to make the payment.

At 1:35 p.m. on August 27 CA Mantel replied.

> Ferrannini: I will do my best to get it signed.

No further communication between the parties appears to have ensued between August 27 and September 7, 2012 at 10:46 a.m., when the government sent the company an email with attachments.

> Keenan: Please see attached for the following documents:
>
> Consent Findings
>
> Cass and Melanie both need to sign
>
> Motion to Approve Consent Findings
>
> Cass needs to sign
>
> Proposed order approving consent findings
>
> This is just FYI, no signatures needed

> Once you have reviewed and signed the documents, please overnight to me. We will then sign and then file with OCAHO, serving you with a copy. After the judge approves, then the money will be due. It will not be due on October 1, as we had previously discussed.
>
> Please let me know if you have any questions.

The attached consent decree contained, inter alia, paragraph four stating that the respondent would withdraw both its denial of the allegations in the complaint and its request for hearing, and would admit to twenty-three specifically described violations. Paragraph eight provided that the respondent understood that those twenty-three violations were a first offense, and that any subsequent violations would be treated as repeat violations. The email itself unilaterally changed the date when payment would be due.

At 10:51 a.m. on September 7, the company responded.

> Ferrannini: My client never agreed to admit to liability (which would be a fairly significant and material term of our settlement agreement and which was never discussed or mentioned in our negotiations). Accordingly, the consent findings are not acceptable. We agreed to settle for $8,000 in exchange for a dismissal. Please advise as to whether you would like us to revise the documents or whether you intend to do so. Thanks.

The government in turn responded promptly at 11:03 a.m.

> Keenan: It is highly unlikely that my client will agree to revise the settlement paperwork as you have proposed. However, I will check with them. If this means that your client no longer wants to settle, please let me know.

CA Mantel made a reply at 11:06 a.m.

> Ferrannini: It is not a question of whether we "still want to settle" – we have already agreed to do so. Our agreement did not include an admission of liability. Drawing up paperwork was a mere formality.

IV. APPLICABLE STANDARDS

Settlements in this forum are achieved in either one of two possible ways. An agreement reached pursuant to 8 C.F.R. § 68.14(a)(1) is one based on consent findings; the specific requirements as to the writings necessary to accomplish such a resolution are set out in §§ 68.14(b)(1)-(4) and the role of the administrative law judge in finalizing such a resolution is set out at § 68.14(c). An agreement reached pursuant to 8 C.F.R. § 68.14(a)(2), on the other hand, requires only that the parties notify the administrative law judge that they have reached a settlement and agree to a dismissal of the case. No particular format is prescribed, and filing of the agreement is not mandatory, although the administrative law judge has the discretion to request it. The role of the administrative law judge is otherwise simply to dismiss the complaint upon receiving notification that the parties have settled.

The differences in the two types of settlement are significant, as are the effects. Under § 68.14(a)(1), the result of consent findings is a final decision and order having the same force and effect as any other final decision and order issued to resolve a case. § 68.14(b). Such effects may include collateral estoppel or res judicata consequences.[2] Under § 68.14(a)(2), on the other hand, the result of a settlement is simply a dismissal of the complaint. The terms of the agreement need not be reflected, and they are not made a part of the dismissal order.

It is well established in our case law that this office has the authority to compel a recalcitrant party to adhere to the terms of an agreement to which the party previously consented. *See Aityahia v. Sabena Airline Training Ctr., Inc.*, 9 OCAHO no. 1122, 4-5 (2006) (citing *Stubbs v. Savannah Hotel Assocs.*, 8 OCAHO no. 1025, 380, 385 (1999); *United States v. Boatright*, 4 OCAHO no. 634, 401, 402 (1994)).[3] In determining whether or not an agreement was reached,

[2] The preclusive effects of a federal court judgment are determined by the federal common law of preclusion. *See Taylor v. Sturgell*, 553 U.S. 880, 891 (2008); *see also S. Cal. Stroke Rehab. Assocs. v. Nautilus, Inc.*, 782 F. Supp. 2d 1096, 1104-05 (S.D. Cal. 2011) (except in diversity actions, California courts apply federal standards to determine preclusive effects of federal judgments).

[3] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders.

the proponent of the settlement bears the burden of showing that there is no genuine issue of material fact as to consent to the agreement. *See Stubbs*, 8 OCAHO no. 1025 at 386.

In making that determination, factual conflicts are resolved most favorably to the nonmoving party, but only if the parties have submitted evidence of contradictory facts. *Aityahia*, 9 OCAHO no. 1122 at 6. If the moving party fails to demonstrate the absence of a genuine issue of material fact as to the existence or terms of a settlement, a hearing is required. *See Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987). A settlement agreement is a contract, and general contract principles are applied in determining whether a settlement has been reached. *See United States v. Yi*, 8 OCAHO no. 1011, 218, 221 (1998). A settlement agreement need not be in writing to be enforceable. *United States v. Westin Hotel Co*., 4 OCAHO no. 701, 975, 976 (1994).

Public policy favors the enforceability of settlement agreements and the concomitant avoidance of litigation. *See Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989) (citations omitted). There is some confusion in the caselaw as to when to apply federal law and when to apply the law of the forum state. In *Botefur v. City of Eagle Point*, 7 F.3d 152, 154-56 (9th Cir. 1993), it was observed that conditions affecting the validity of a release of federal rights are a matter of federal law, but interpretation of a settlement agreement, even one involving a federal cause of action, is governed by the principles of state contract law. But because contracts with the United States must be governed by federal law, the federal common law of contracts is to be followed where the United States is itself a party to the case. *See GECCMC 2005-C1 Plummer St. Office Ltd. v. JP Morgan Chase Bank*, 671 F.3d 1027, 1032 (9th Cir. 2012); *see also Chaly-Garcia v. United States*, 508 F.3d 1201, 1203 (9th Cir. 2007).

Courts interpreting a contract according to the federal common law look to "general principles for interpreting contracts," *County of Santa Clara v. Astra USA, Inc.*, 588 F.3d 1237, 1243 (9th Cir. 2009), *rev'd on other grounds sub nom. Astra USA, Inc. v. Santa Clara County, Cal*., 131 S. Ct. 1342 (2011), although the same result might well be reached under state law as well. *See Cachil Dehe Band of Wintun Indians v. California*, 618 F.3d 1066, 1073 (9th Cir. 2010) (observing that the parties noted no difference between California and federal contract law).

The language of a settlement agreement is interpreted under federal common law in the ordinary and popular sense, as would a person of average intelligence and experience. *See Funeral Fin. Sys. v. United States*, 234 F.3d 1015, 1018 (7th Cir. 2000). Thus under the general principles of federal common law, words are to be given their common or ordinary meaning. *See Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009).

V. DISCUSSION AND ANALYSIS

There appears to be no factual dispute as to precisely what was said during the negotiations, and the communications between the parties are clearly set out in the email trail. Neither party contends that the communications themselves are in any way ambiguous. The parties nevertheless disagree as to the significance of those communications, and each seeks to draw different inferences as to their implications by emphasizing particular words and phrases that were either used or omitted during the negotiations. The Ferrannini declaration observes, for example, that "[a]t no time during the settlement negotiations did Ms. Keenan and I discuss or negotiate a term that would require CA Mantel to admit liability as a condition of settlement or agree to increased fines in the future." The Keenan declaration does not dispute this assertion, which the email trail also confirms.

Keenan asserts, however, that she told Ferrannini on the telephone prior to August 27, 2012 that if the dollar amount were agreed, there would be "additional paperwork" to prepare, and that when she emailed Ferrannini on August 27, 2012 offering to prepare the agreement and "other documents," the "other documents" she was referring to "included the Department's proposed consent findings." The Keenan declaration does not claim, however, that the declarant ever expressly mentioned the terms "consent findings" or "consent decree" to Ferrannini, but points out that neither did she ever expressly say that the government would dismiss the case solely in exchange for $8000.

While ICE's response to CA Mantel's motion asserts that it "has, at all times, intended – and communicated the fact – that any proposed settlement be reduced to a separate writing to be executed at a later time, including consent findings pursuant to section 68.14(a)(1) of the regulations," the record reflects only that the parties agreed that a separate writing would be executed. The remainder of this assertion is not supported either by the Keenan declaration or by the negotiations between the parties. Unsworn factual allegations in a brief or memorandum are not evidence and are not to be considered absent evidence in the record to support them. *United States v. Ronning Landscaping, Inc.*, 10 OCAHO no. 1149, 14-15 (2012). The record reflects instead that no reference whatsoever was made during the negotiations to the OCAHO procedural regulations, much less to section 68.14(a)(1) in particular, and the words "consent decree" or "consent findings" appear nowhere in the negotiations either. No mention was made by either party of a term proposing that CA Mantel would admit to liability, or consent to be treated as a serial offender in case of any subsequent violation. The terminology consistently used by the parties was "settlement agreement," not "consent findings" or "consent decree."

The fact that parties dispute the meaning of a contract does not necessarily mean that the contract is ambiguous. *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999), *amended on denial of reconsideration*, 203 F.3d 1175 (9th Cir. 2000). The government does not suggest that there is any ambiguity in the words "$8000 will seal the deal." Neither does it contend that the words "settlement agreement" are themselves ambiguous. It nevertheless contends that no agreement came into being on August 27 for two reasons; first, because the parties did not agree on all material terms, including the basis for CA Mantel's liability and CA Mantel's consideration, and second, because the government contemplated a subsequent writing that had to take the form of a consent decree.

The negotiations here were not conducted by lay people but by attorneys, sophisticated litigants who can reasonably be expected to use words with some precision and to appreciate the difference between a settlement agreement and a consent decree. I credit, as I must, Keenan's statement that when she spoke of the documents needing to be finalized, the intent in her mind was that those documents would include proposed consent findings. A subjective and latent intent that was not communicated to the other party before the deal was made cannot, however, be given any effect. As explained by Oliver Wendell Holmes in, *The Path of the Law*, 10 Harv. L. Rev. 457, 464 (1897), "the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs – not on the parties' having *meant* the same thing, but on their having *said* the same thing."

The standard for determining intent is thus an objective one and a party's unexpressed intent is irrelevant. All that is required to form a contract is a manifestation of mutual assent to an exchange, and consideration for the bargain. *See* Restatement (Second) of Contracts § 17 (1981). The commentary to that section explains,

> The element of agreement is sometimes referred to as a "meeting of the minds." The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. The phrase used here, therefore, is "manifestation of mutual assent," as in the definition of "agreement" . . . .

Whatever unexpressed intent may have lurked in the mind of either party, a manifestation of mutual intent occurred on August 27, 2012 when the parties "*said* the same thing." There is no genuine issue of material fact as to the email communications on August 27, 2012 between ICE and CA Mantel, and all the necessary elements of a contract are reflected in those communications: offer, acceptance, and consideration. The objective intent reflected in those negotiations indicates that the written agreement contemplated was a settlement agreement that would memorialize terms the parties already agreed upon, not a totally new proposal that would initiate yet another round of negotiations.

While Keenan asserts that she volunteered to prepare the paperwork, the negotiations reflect that Ferrannini asked Keenan to do so, and that Keenan replied that she would prepare "the settlement agreement." She did not say that she would prepare a consent decree with new and additional terms. Nothing was said then or at any point prior to September 7 about a consent decree, about any admission of liability, or about consent to be treated as a repeat offender. The record also reflects that it was the government's counsel that asked CA Mantel's counsel on August 27 to inform this office that the parties "have reached an agreement," and that they were "finalizing the settlement paperwork" so that an unnecessary prehearing conference would not be scheduled. There would have been no reason for the government to make this request if it did not believe that a settlement agreement had been finalized. The subsequent proffering of additional terms and conditions in the "proposed" consent findings put forth on September 7, 2012 is wholly inconsistent with this request as well as with the negotiations between the parties. Construing the agreement in the manner suggested by the government would render the agreement illusory, contrary to the command of *FDIC v. New Hampshire Insurance Co.*, 953 F.2d 478, 481 (9th Cir. 1991) (citing *Shakey's, Inc. v. Covalt*, 704 F.2d 426, 434 (9th Cir. 1983)) that reasonable interpretations are to be preferred over ones that are unreasonable, or ones that would render a contract illusory.

As the Restatement (Second) of Contracts § 26 (1981) instructs, moreover, the fact that the parties intend to adopt a subsequent written document to memorialize an agreement does not prevent the formation of a contract. Nowhere in any of the emails that were exchanged on August 27, 2012, is there any suggestion that either party intended to make its obligations under the settlement agreement contingent upon the execution of a formal document. The due date for payment was set for October 1, 2012 and was not made contingent on the signing of a document. The only contingency mentioned was the provision of the appropriate instructions for mailing the payment.

VI. CONCLUSION

A party that has agreed to a settlement is not free to change its mind later and repudiate the agreement, *Stubbs*, 8 OCAHO no. 1025 at 385, and a valid settlement agreement bars the settling parties from continuing to litigate the underlying claim. *See Yi*, 8 OCAHO no. 1011 at 220.

The government's suggestion that I lack jurisdiction over the motion to enforce settlement agreement is rejected. Nothing in *Kokkonen v. Guardian Life Insurance Co. of Am.*, 511 U.S. 375, 380-82 (1994) suggests such a conclusion. While *Kokkonen* reflects the unimpeachable principle that federal courts lack any inherent jurisdiction to enforce a settlement agreement after a case has been dismissed, it says nothing that would create an impediment to the authority of a court to deal with cases pending before it. While it is beyond cavil in light of *Kokkonen* that

once a final decision and order is entered disposing of a case, this forum has no authority to provide continuing oversight or monitoring of a settlement, *United States v. IBP, Inc.*, 5 OCAHO no. 766, 371, 372 (1995), that fact in no way precludes the entry of a final judgment that would carry out the terms of the agreement made by the parties in a pending case. There is no issue of material fact requiring a hearing, the parties entered an agreement that is binding on both of them, and the terms of the agreement will accordingly be incorporated in a final order.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to the materials submitted by the parties, I have considered the record as a whole, including the pleadings, attachments thereto, and all other materials of record, on the basis of which I make the following findings and conclusions.

A. Findings of Fact

1. California Mantel, Inc. is a corporation located at 4141 N. Freeway Blvd., Sacramento, California 95834.

2. According to Melanie Casey, CFO for California Mantel, Inc., the company has approximately sixty employees and is engaged in the business of producing high quality fireplace materials including wood mantels and precast fireplace mantels as well as providing such services as delivery, installation, and after-sale service.

3. The Department of Homeland Security, Immigration and Customs Enforcement (ICE) served a Notice of Intent to Fine on California Mantel, Inc. on October 27, 2011.

4. California Mantel, Inc. made a Request for Hearing on November 23, 2011.

5. On March 14, 2012, the Department of Homeland Security, Immigration and Customs Enforcement filed a complaint alleging that California Mantel, Inc. engaged in twenty-three violations of 8 U.S.C. § 1324a(a)(1)(B) (2006).

6. Email communications between California Mantel, Inc. and the Department of Homeland Security, Immigration and Customs Enforcement reflect that on August 27, 2012, they agreed to settle their dispute for $8000 with each side bearing its own costs, and with payment to be made on October 1, 2012 pursuant to instructions to be provided by the Department of Homeland Security, Immigration and Customs Enforcement.

7. Email communications between California Mantel, Inc. and the Department of Homeland Security, Immigration and Customs Enforcement reflect that on August 27, 2012 the Department

requested the company to notify the Office of the Chief Administrative Hearing Officer that a settlement had been reached.

8. On August 28, 2012, California Mantel, Inc. sent a letter to the Office of the Chief Administrative Hearing Officer stating that the parties had reached a settlement and that they would be finalizing their agreement in the next couple of weeks and filing a Notice of Settlement at that time.

9. Email communications between California Mantel, Inc. and the Department of Homeland Security, Immigration and Customs Enforcement reflect that on September 7, 2012 the Department proposed new and additional terms not previously referred to.

B. Conclusions of Law

1. This is an action arising under the Immigration and National Act, 8 U.S.C. § 1324a (2006).

2. California Mantel, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2006).

3. All conditions precedent to the institution of the complaint have been satisfied.

4. California Mantel, Inc. and Immigration and Customs Enforcement (ICE) on August 27, 2012 manifested their mutual assent to a bargain involving an offer, acceptance, and consideration.

5. A settlement agreement need not be in writing to be enforceable. *United States v. Westin Hotel Co.*, 4 OCAHO no. 701, 975, 976 (1994).

6. The parties to this matter entered a binding agreement in which the Department of Homeland Security, Immigration and Customs Enforcement agreed to accept, and California Mantel, Inc. agreed to pay, the sum of $8000 to settle the matter, with each side paying its own costs and fees.

7. The Department of Homeland Security, Immigration and Customs Enforcement is precluded from pursuing this matter further, and the complaint must be dismissed.

To the extent any statement of fact is deemed to be a conclusion of law, or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth herein at length.

ORDER

The Department of Homeland Security, Immigration and Customs Enforcement is directed to provide California Mantel, Inc., with the appropriate mailing instructions for payment within thirty days of the date of this order. California Mantel, Inc. is directed within thirty days of receiving the mailing instructions to pay the sum of $8000 in accordance with those instructions. Each side is to bear its own costs and fees. The complaint is dismissed.

SO ORDERED.

Dated and entered this 8th day of February, 2013.

_____

Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.