IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:19-CV-86-D

MICHAEL ROY SHEPPARD, Plaintiff, v. SHERIFF ERNIE COLEMAN, Defendant.	)	**ORDER**

Michael Roy Sheppard ("Sheppard" or "plaintiff") filed a complaint against Beaufort County Sheriff Ernie Coleman ("Coleman" or "defendant") alleging violations of Title VII of the Civil Rights Act of 1964 [D.E. 6, 18, 41] (complaint and amended complaints). Sheppard contends the parties reached a settlement agreement on April 20, 2021. Coleman disagrees. On July 16, 2021, Sheppard filed a motion and supporting exhibits asking the court to enforce the parties' settlement agreement [D.E. 75]. On August 6, 2021, Coleman responded in opposition and filed in support the sworn declarations of Coleman and his attorney, Patrick Spaugh ("Spaugh") [D.E. 80]. On August 7, 2021, Sheppard replied and filed in support exhibits and the sworn declaration of Sheppard's attorney, Harry Daniels ("Daniels") [D.E. 82]. On October 19, 2021, the court held a plenary evidentiary hearing to hear evidence and arguments on whether the parties reached a settlement agreement [D.E. 88]. As explained below, the parties did reach a settlement agreement, and the court grants Sheppard's motion to enforce the settlement agreement.

I.

On March 24, 2021, after denying the parties' cross motions for summary judgment, the court ordered the parties to participate in a court-hosted settlement conference with United States

Magistrate Judge James E. Gates. See [D.E. 63] 3. On April 16, 2021, the parties participated in a court-hosted settlement conference with Judge Gates. See [D.E. 69]. Sheppard, Daniels, and another attorney, Tyrell Clemons ("Clemons"), attended for the plaintiff. Coleman, Deputy Chief Charles Rose ("Rose") of the Beaufort County Sheriff's Office, Spaugh, attorney Chris Geis, and Virgil Hollingsworth ("Hollingsworth") attended for the defendant. Hollingsworth represents the insurance pool with which the Beaufort County Sheriff's Office has an agreement that covers the dispute at issue.

At the settlement conference, Coleman and the insurance pool authorized Spaugh to offer $150,000 to settle the case, even though Coleman was uncomfortable with settling.[1] Sheppard declined the offer and made a $200,000 counteroffer. The parties concluded the settlement conference at an impasse. Coleman authorized Spaugh to continue the negotiations after the settlement conference, and the attorneys told Coleman they would discuss a possible settlement without him. Spaugh had authority from Hollingsworth and the insurance pool to negotiate a settlement and could do so over Coleman's objection. At the conclusion of the settlement conference, Judge Gates ordered the parties to notify him of the their progress by the close of business on April 19, 2021. See [D.E. 75] 3; [D.E. 80] 2. The parties failed to do so. See [D.E. 80] 2; Spaugh Decl. [D.E. 80-1] ¶ 4. Judge Gates then ordered the parties to update him by the close of business on April 20, 2021. See [D.E. 80] 2.

[1] At the evidentiary hearing, Spaugh testified that on April 16, 2021, Coleman authorized him to offer $150,000 as part of negotiations at the court-hosted settlement conference. Coleman, in direct contradiction, testified that no one ever told him that $150,000 was the amount being offered at that settlement conference. The court finds Coleman's testimony not credible and credits Spaugh's testimony.

Sometime between April 16 and April 20, 2021, Hollingsworth authorized Spaugh to make a $175,000 settlement offer. Spaugh did not confer with Coleman about the $175,000 offer and Coleman did not expressly authorize the offer, but Spaugh properly believed he had implied authority from Coleman to continue the negotiations by making the $175,000 offer. On April 20, 2021, Spaugh communicated the $175,000 offer to Clemons by text message and then to Daniels by phone. See Daniels Decl. ¶ 3; Spaugh Decl. ¶ 5. Immediately thereafter, Spaugh told Rose about the offer. Rose did not object or otherwise express disagreement, and he did not tell Coleman about the offer.

Daniels communicated the offer to Sheppard, who authorized Daniels to accept the settlement offer. See Daniels Decl. ¶¶ 3–4. Daniels then called Spaugh to accept the offer, and Sheppard "agreed to dismiss the lawsuit with prejudice in exchange for a $175,000 payment to" Sheppard. Spaugh Decl. ¶ 5; see Daniels Decl. ¶¶ 4–5. The parties also agreed that Sheppard would release Coleman and the Beaufort County Sheriff's Office from all claims and that the parties would sign a confidentiality agreement. See Spaugh Decl. ¶ 5; Daniels Decl. ¶ 5. Spaugh offered to reduce the agreement to writing and send it to Daniels. See Spaugh Decl. ¶ 5; Daniels Decl. ¶ 6. Spaugh then emailed Deputy Clerk Bobbie Horton the following update:

> Dear Ms. Horton,
>
> The parties have reached an agreement.
>
> Thank you,
> Patrick

Pl. Ex. A [D.E. 75-1]. The following morning, Deputy Clerk Horton confirmed she received Spaugh's email and would update Judge Gates. See Pl. Ex. B [D.E. 75-2]. Judge Gates then emailed all counsel setting a two-week deadline to file a dismissal of the case pursuant to the settlement

agreement. See Pl. Ex. C [D.E. 75-3]. The parties had no further communication about the agreement. See Spaugh Decl. ¶ 7.

Spaugh emailed a draft written agreement to Coleman and Rose. Rose printed the agreement and showed it to Coleman, who refused to sign it. Spaugh did not talk to Coleman about the $175,000 settlement offer until April 26, 2021. On April 30, 2021, ten days after telling Judge Gates that "[t]he parties ha[d] reached an agreement," Pl. Ex. A [D.E. 75-1], Spaugh emailed Judge Gates and Sheppard's counsel and wrote:

> Dear Judge Gates,
>
> Sheriff Coleman has decided to not proceed with settling the case and to instead try the case.
>
> We will confer with counsel for Plaintiff to provide available dates for trial. Is there a specific range of availability in Judge Dever's calendar to guide us in our proposal of available dates?
>
> Respectfully,
> Patrick Spaugh

Pl. Ex. D [D.E. 75-4]. Judge Gates responded by ordering the parties to attend a second court-hosted settlement conference, which occurred on May 17, 2021. See [D.E. 75] 4; see also [D.E. 73]. The settlement conference produced no resolution.

On July 16, 2021, Sheppard filed a motion asking the court to enforce the parties' settlement agreement. See [D.E. 75]. Coleman opposes the motion, arguing the parties never reached a settlement agreement. See [D.E. 80].

II.

"The law strongly favors settlement of litigation, and there is a compelling public interest and policy in upholding and enforcing settlement agreements voluntarily entered into." Hemstreet v. Spiegel, Inc., 851 F.2d 348, 350 (Fed. Cir. 1988); see also Central Wesleyan College v. W.R. Grace

& Co., 6 F.3d 177, 185 (4th Cir. 1993) (stating "[c]ourts should foster settlement in order to advantage the parties" and conserve scarce judicial resources). "[D]istrict courts have inherent authority, deriving from their equity power, to enforce settlement agreements." Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002); Petty v. Timken Corp., 849 F.2d 130, 132 (4th Cir. 1988). The court's inherent authority applies whether the settlement agreement is written or oral. Hensley, 277 F.3d at 540; Alexander v. Industries of the Blind, Inc., 901 F.2d 40, 41 (4th Cir. 1990). "A settlement agreement may be enforceable notwithstanding the fact that it is not yet consummated." Topiwala v. Wessell, 509 F. App'x 184, 186 (4th Cir. 2013) (per curiam) (unpublished); see Hensley, 277 F.3d at 542.

"When considering a motion to enforce a settlement agreement, the district court applies standard contract principles." Swift v. Frontier Airlines, Inc., 636 F. App'x 153, 154 (4th Cir. 2016) (per curiam) (unpublished); see Campbell v. Adkisson, Sherbert & Assocs., 546 F. App'x 146, 156 (4th Cir. 2013) (Agee, J., concurring) (unpublished) ("Under North Carolina law, the formation of a settlement agreement is considered according to the established rules of ordinary contract law." (footnote omitted)); Bradley v. Am. Household, Inc., 378 F.3d 373, 380 (4th Cir. 2004). A district court must determine whether the parties "reached a complete agreement," and if so, the court "must be able to determine its terms and conditions." Hensley, 277 F.3d at 540–41; see Swift, 636 F. App'x 154–55; Campbell, 546 F. App'x at 152 (majority opinion); Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991). "In deciding whether a settlement agreement has been reached, the [c]ourt looks to the objectively manifested intentions of the parties." Moore, 936 F.2d at 162.

If the parties dispute the existence of an agreement or the agreement's terms, "the district court may not enforce [the] agreement summarily." Hensley, 277 F.3d at 541 (emphasis omitted). Rather, the court must resolve the disputes through a plenary evidentiary hearing. See id.

Conversely, where the parties do not dispute the existence of an agreement or its terms and conditions, a district court has inherent authority to enforce the agreement "without a plenary hearing." Petty, 849 F.2d at 132; see United States v. Newport News Shipbuilding & Dry Dock Co., 571 F.2d 1283, 1286 (4th Cir. 1978).

III.

The court must determine whether the parties reached a complete agreement and, if so, what are the terms of that agreement. See Swift, 636 F. App'x at 154–55; Campbell, 546 F. App'x at 152; Hensley, 277 F.3d at 540–41; Moore, 936 F.2d at 162. The court addresses each in turn.

A.

The court first examines whether the parties reached a complete agreement, taking into account both the parties' filings and the testimony and arguments presented at the plenary evidentiary hearing on October 19, 2021. See Hensley, 277 F.3d at 540–41; Moore, 936 F.2d at 162. The court finds that on April 20, 2021, Spaugh had authority from Hollingsworth, who represented the insurance pool, to settle the case for $175,000, and that Spaugh properly communicated a $175,000 settlement offer to Sheppard's counsel (i.e., Daniels and Clemons). See Spaugh Decl. ¶ 5; Daniels Decl. ¶ 3. Daniels, after conferring with Sheppard, accepted the $175,000 offer in exchange for dismissing the case with prejudice and entering a confidentiality agreement. See Spaugh Decl. ¶ 5; Daniels Decl. ¶¶ 4–5. Spaugh and Daniels's communications constitute a clear offer and acceptance of those terms. See Spaugh Decl. ¶ 5. Sheppard promising to dismiss the case with prejudice was valuable consideration in exchange for the promised $175,000 payment from the insurance pool. See York v. Westall, 143 N.C. 276, 279, 55 S.E. 724, 725 (1906) ("[T]he prevention of litigation is a valid and adequate consideration . . . . It is not only a sufficient, but a highly favored

consideration."); Hardin v. KCS Intern., Inc., 199 N.C. App. 687, 703–04, 682 S.E.2d 726, 738 (2009).

In response to a direct order from Judge Gates to update him on the parties' negotiations, Spaugh told Judge Gates on April 20, 2021: "The parties have reached an agreement." Pl. Ex. A [D.E. 75-1]. Spaugh did not qualify that statement, specify that the agreement was contingent on putting the agreement in writing, specify that the agreement was contingent on the wording of the confidentiality or any other provision, or specify that the agreement was otherwise tentative or conditional in any way. Rather, Spaugh unequivocally told Judge Gates that the parties reached a settlement agreement.[2] Judge Gates, accepting Spaugh's representation as true, set a two-week deadline for Sheppard to dismiss the case with prejudice. See Pl. Ex. C [D.E. 75-3]. Accordingly, the court finds the parties reached a complete settlement agreement. See, e.g., Bledsoe v. MHI Hotels Servs., No. 5:05-CV-607-D(3), 2007 WL 9718464, at *3 (E.D.N.C. April 20, 2007) (unpublished) (relying on an email as confirmation of a settlement agreement reached via telephone).

In opposition, Coleman makes three arguments. First, Coleman argues there was no meeting of the minds because the parties did not agree on the specific wording of the settlement agreement. Second, Coleman argues the agreement was contingent on executing a writing. Third, Coleman contends Spaugh lacked authority to enter into the settlement agreement.

1.

Coleman first argues there was no meeting of the minds because the parties did not reach an agreement as to the specific wording of various terms, including, inter alia, "specific language of a

[2] Spaugh testified that he should have said in the email that the agreement was "tentative." But Spaugh did not say that. The court credits the email, not Spaugh's after-the-fact testimony, as indicating Spaugh believed the parties had reached an agreement.

release, language of a confidentiality provision, language of a non-disparagement provision," language for an enforcement mechanism, and "the effective date of an agreement." [D.E. 80] 4.

In support, Coleman cites Chappell v. Roth, 353 N.C. 690, 548 S.E.2d 499 (2001). In Chappell, the Supreme Court of North Carolina held a settlement agreement unenforceable because the parties had not agreed on the language of a release provision, which was a material term of the agreement. See id. at 693, 548 S.E.2d at 500–01. Coleman argues that because the parties did not agree on the specific language of the release and other provisions, the settlement agreement lacks at least one material term and is unenforceable. See [D.E. 80] 4.

Chappell does not help Coleman. In Chappell, the release provision was a material term of the settlement agreement because the "release was part of the consideration." Id., 548 S.E.2d at 500. However, according to the plain language of the settlement agreement in Chappell, the agreement was contingent on drafting language for the release provision that was "mutually agreeable to both parties." Id. at 691, 693, 548 S.E.2d at 500. Thus, the settlement agreement failed when one party objected to the proposed release. See id. at 691, 548 S.E.2d at 500; see also Campbell, 546 F. App'x at 153–54 (reading Chappell similarly). In contrast, Coleman and Sheppard's agreement was not contingent on the specific wording in a written document. Spaugh offered to reduce the parties' agreement to writing. See Spaugh Decl. ¶ 5; Daniels Decl. ¶ 6. Before doing so, however, Spaugh wrote to Judge Gates on April 20, 2021, that "[t]he parties have reached an agreement." Pl. Ex. A [D.E. 75-1]. Nothing in Spaugh's clear and unqualified statement to Judge Gates suggests that drafting a "mutually agreeable" writing as to any provision was a material term of the parties' settlement agreement.

As for the lack of an agreed-upon effective date, an agreement does not fail merely because the agreement does not specify the time for performance. Without a definite time for performance,

the parties need only consummate the settlement agreement within a reasonable time. See Maxwell v. Michael P. Doyle, Inc., 164 N.C. App. 319, 327, 595 S.E.2d 759, 764 (2004); Rodin v. Merritt, 48 N.C. App. 64, 71–72, 268 S.E.2d 539, 544 (1980). Judge Gates defined a reasonable time frame by giving the parties two weeks in which to consummate the settlement and for Sheppard to dismiss the lawsuit with prejudice. See Pl. Ex. C [D.E. 75-3]. No party objected that the two-week deadline was unreasonable.

In Campbell v. Adkisson, Sherbert & Associates, the Fourth Circuit affirmed the district court enforcing an oral settlement agreement in which the parties agreed to a sum certain, dismissal with prejudice, a confidentiality agreement, and the parties bearing their own costs. See Cambpell, 546 F. App'x at 153. Furthermore, the Fourth Circuit affirmed the district court's "finding that choice-of law, venue, and release provisions were not material terms of the parties' agreement." Id. In Campbell, "the issues presented at the hearing on the motion to enforce were essentially issues of credibility." Id. As in Campbell, credibility issues predominate in this case, and the court finds that the parties did enter into an enforceable agreement with adequately defined material terms that include the amount of the settlement, dismissal of plaintiff's claims with prejudice, a release from all claims, and a confidentiality agreement. As Campbell illustrates, the parties' material terms are sufficient to create an enforceable settlement agreement. And unlike in Chappell, the parties did not make the agreement contingent on agreeing to the specific wording of a written document. Accordingly, the court rejects Coleman's argument that the settlement agreement fails for lack of agreement on the "specific language of" certain provisions. [D.E. 80] 4.

2.

Coleman next argues that the parties' settlement agreement was contingent upon executing a written document. See [D.E. 80] 5–6. The court rejects this argument. Spaugh and Daniels

discussed the terms orally over the phone, and Spaugh told Judge Gates that the parties had reached an agreement. The parties may have implicitly understood that they would put the agreement's terms in writing, but that is different than making Spaugh's offer and Daniels's acceptance on behalf of their clients contingent on that writing. No evidence shows such a contingency, and whether the parties had yet signed a written settlement agreement is irrelevant to whether the parties entered into an enforceable settlement agreement. After all, "[p]arties to contractual negotiations may enter into an enforceable oral contract that is later to be expressed in writing if, intending to be bound, they reach agreement on all major issues." Newport News Shipbuilding & Dry Dock Co., 571 F.2d at 1286. And after parties reach an oral settlement agreement, the court may enforce it. See Hensley, 277 F.3d at 540; Alexander, 901 F.2d at 41. As discussed, the court finds the parties intended to enter a settlement agreement, agreed to all the material terms in the settlement agreement, and entered into an enforceable oral settlement agreement.

Once Spaugh sent a draft written settlement agreement to Coleman, the oral agreement did not become unenforceable merely because Coleman refused to sign any written agreement. See Topiwala, 509 F. App'x at 186 ("A settlement agreement may be enforceable notwithstanding the fact that it is not yet consummated."); cf. Moore 936 F.2d at 163 ("Once the Board authorized [the attorney] to settle the case, he was empowered to bind the Board. There is no requirement that the Board sign the final consent decree."). Thus, the court rejects Coleman's argument that the settlement agreement was contingent upon executing a written settlement agreement.

In opposition, Coleman cites Howard v. IOMAXIS, LLC, No. 18 CVS 11679, 2020 WL 2104823 (N.C. Super. May 1, 2020) (unpublished). There, the court noted that "where the parties manifest 'an intent not to become bound until the execution of a more formal agreement or document, then such an intent will be given effect.'" Id. at *6 (alteration omitted) (quoting N.C.

Nat'l Bank v. Wallens, 26 N.C. App. 580, 583, 217 S.E.2d 12, 15 (1975)). In Howard, the court held the parties had not reached an enforceable settlement agreement based on language in a Memorandum of Settlement that the parties could still take depositions to prepare for the possibility that "the Parties are unable to agree to the terms of a final settlement such that it is necessary to continue with the litigation of the Action." Id. Based on this and other language in the Memorandum of Settlement, the court found that the Memorandum of Settlement itself contemplated agreeing to a future, "final settlement." Id. at *6–7.

Analogizing to Howard, Coleman argues that "there was an understanding between the parties that no settlement would be final" until the parties executed a written agreement. [D.E. 80] 5. Coleman's argument amounts to a factual dispute about the parties' intentions. The court finds that the parties did not manifest an intent not to be bound until the agreement was in writing. Spaugh and Daniels reached an oral agreement over the phone, and Spaugh offered to reduce the agreement to writing. See Spaugh Decl. ¶ 5; Daniels Decl. ¶¶ 3–7. But the agreement was not contingent on that writing. After all, before drafting the written version of the agreement, Spaugh wrote to Judge Gates that "[t]he parties have reached an agreement." Pl. Ex. A [D.E. 75-1]; cf. Spaugh Decl. ¶ 6. If the agreement was contingent on a writing, it would have been premature for Spaugh to update the court in such a definite and unqualified manner. Spaugh's unequivocal statement is far different than the Memorandum of Settlement in Howard that expressly contemplated a future, final writing. See Howard, 2020 WL 2104823, at *6–7. Moreover, when Spaugh emailed the court on April 30, 2021, he wrote that Coleman "has decided to not proceed with settling the case and to instead try the case." Pl. Ex. D [D.E. 75-4]. This second email comports with trying to avoid proceeding with an already agreed-upon settlement rather than seeking a trial based on an argument that no agreement ever existed.

Having reviewed the entire record and having made credibility determinations, the court finds that none of the parties' communications "manifest[ed] an intent not to become bound until the execution of a more formal agreement or document." Howard, 2020 WL 2104823, at *6 (quotation omitted).[3] Accordingly, the court rejects Coleman's argument that reaching a settlement agreement was contingent on executing a written document.

3.

Finally, Coleman argues that the parties did not reach a complete agreement because he never expressly authorized his attorneys to agree to a settlement on his behalf. See [D.E. 80] 6. But Coleman's attorneys did not need express authority from Coleman to settle this case. Both Spaugh and Rose testified that the insurance pool had authority to settle over Coleman's objections. Spaugh also testified that the insurance pool takes into consideration the insured's interests but ultimately makes its own settlement determination. Coleman understood at the end of the first settlement conference that the insurance pool might settle the case without his approval.

Spaugh and Hollingsworth properly settled the case without Coleman's express approval and without allowing Coleman to have a trial. "[I]n weighing possible settlement offers an insurance company does bear a responsibility of dealing with its insured fairly and in good faith." Gardner v. Aetna Cas. & Sur. Co., 841 F.2d 82, 85 (4th Cir. 1988); see Cash v. State Farm Mut. Ins. Co., 137 N.C. App. 192, 204, 528 S.E.2d 372, 379, aff'd, 353 N.C. 257, 538 S.E.2d 569 (2000) (per curiam);

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[3] As part of this argument, Coleman argues that when Spaugh and Daniels discussed the $175,000 settlement, Spaugh told Daniels the Beaufort County Board of Commissioners might have to approve the settlement. See [D.E. 80] 6. Coleman argues this comment shows that Spaugh and Daniels's discussion was contingent. See id. However, Spaugh testified that the Board of Commissioners in fact does not have to approve the settlement. Thus, the issue is moot. Moreover, whether the Board of Commissioners had to approve the agreement does not affect whether Spaugh and Daniels reached a complete agreement that was otherwise enforceable. They did.

Robinson v. N.C. Farm Bureau Ins. Co., 86 N.C. App. 44, 50, 356 S.E.2d 392, 395 (1987). An insurance company's decision to settle is made "in good faith" if that settlement is within the policy limits and the evidence suggests the risk of losing at trial or suggests the cost of continued litigation is greater than the cost of settlement. Merenstein v. St. Paul Fire & Marine Ins. Co., No. Civ.A. 04-0139, 2006 WL 848119, at *2 (E.D. Va. 2006) (unpublished); see Gardner, 841 F.2d at 85–86. Notably, "insurance companies and their agents do not act as agents for the insured when settling claims." Cash, 137 N.C. App. at 204, 528 S.E.2d at 379 (cleaned up). In fact, "an insurer may act in its own interest in settlement of the claim." Id. at 205, 528 S.E.2d at 380 (citation omitted). Thus, an insurer need not give an insured "an opportunity to assume control of the litigation before settling it over his objection." Gardner, 841 F.2d at 86. Accordingly, the absence of express authorization from Coleman does not affect Hollingsworth's ability to authorize Spaugh to offer $175,000 to settle the case and Spaugh acting on that authorization. Moreover, no evidence suggests that Hollingsworth and Spaugh acted in bad faith. In fact, this court finds that they acted in good faith. Furthermore, no party has argued that the settlement amount exceeds the policy limit or what the insurance pool authorized Hollingsworth (and thus Spaugh) to offer. And the court's denial of the parties' cross motions for summary judgment indicates a genuine issue of material fact exists and creates the risk Coleman would lose at trial. Likewise, regardless of who prevailed at trial, a trial and any resulting appeal would be costly.

Equity also undermines Coleman's belated argument. Sheppard and his counsel had no way to know Coleman had not expressly authorized the settlement. After all, Coleman attended and participated in the first settlement conference, and the parties' negotiations on April 20, 2021, were an extension of that conference. Moreover, counsel of record generally have apparent authority to settle litigation on behalf of their clients. See Moore, 936 F.2d at 163–64. Thus, Daniels and

Clemons, acting on Sheppard's behalf, were entitled to presume Spaugh had authority to settle the case when he made the $175,000 offer. No evidence indicates Coleman expressly revoked Spaugh's authority, and even if he did, no evidence indicates Daniels and Clemons had reason to know of the revocation. Regardless, because Spaugh had apparent authority to settle, Spaugh could bind Coleman to settle the case even if doing so exceeded Spaugh's actual authority. Cf. Petty, 130 F.2d at 133 ("[T]he integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney. In such cases, any remaining dispute is purely between the party and his attorney.").

In light of Hollingsworth authorizing Spaugh to make a $175,000 offer, Spaugh communicating that offer to both Clemons and Daniels, Daniels obtaining authorization from Sheppard to accept the offer, Daniels calling Spaugh and accepting the offer, and Spaugh unequivocally and without any qualification representing to Judge Gates that the parties reached an agreement, the court finds that the parties reached a complete oral settlement agreement on April 20, 2021. Cf. Hensley, 277 F.3d at 540; Petty, 849 F.2d at 132. Although Coleman testified he wants to take this case to trial, the court finds that Coleman is merely expressing "buyer's remorse." Buyer's remorse, however, does not warrant setting aside this valid settlement agreement. Hensley, 277 F.3d at 540.

B.

Having determined that the parties reached a complete agreement, the court next determines the settlement agreement's terms and conditions. See Swift, 636 F. App'x at 154–55; Campbell, 546 F. App'x at 152; Hensley, 277 F.3d at 540–41; Moore, 936 F.2d at 162. The court finds that the agreement included the following terms: (1) the insurance pool shall pay $175,000 to Sheppard; (2) the parties shall dismiss this lawsuit with prejudice; and (3) Sheppard shall release Coleman, the

Beaufort County Sheriff's Office, and all other defendants from any and all claims arising from the circumstances that prompted this lawsuit.

The parties contemplated a confidentiality agreement as part of the settlement. However, the court declines to enforce a confidentiality agreement as part of the settlement agreement. "Settlement of litigation is an important public interest." Doe v. Doe, 263 N.C. App. 68, 96, 823 S.E.2d 583, 600 (2018). And, "[c]ourts are generally indifferent to the nature of the parties' agreement; why or how the case is settled is of little concern." Id., 823 S.E.2d at 600 (quotation omitted); see Ehrenhaus v. Baker, 216 N.C. App. 59, 72, 717 S.E.2d 9, 19 (2011). Furthermore, protecting the confidentiality of settlement agreements helps promote both settlement and freedom of contract. See Doe, 263 N.C. at 96, 823 S.E.2d at 600. However, why and how this case was settled is of paramount concern because the parties dispute the very existence of an enforceable settlement agreement. Thus, "although parties to a confidential settlement agreement may prefer to keep its terms secret, 'once they turn to the federal court to resolve their disputes . . . the public administration of justice demands transparency.'" Harper v. Nevada Prop. 1, LLC, No. 2:19-cv-02069-GMN-VCF, 2021 WL 3418350, at *4 (D. Nev. Aug. 5, 2021) (quotation omitted); see Avocados Plus Inc. v. Freska Produce Int'l LLC, No. 2:19-cv-06451-RGK-JC, 2019 WL 12345580, at *2 (C.D. Cal. Oct. 8, 2019) (unpublished).

In Harper, the court balanced the parties' desire for confidentiality against the need for transparency by holding that "the terms of settlement pertinent to analyzing the motion to enforce will not be kept secret, but the terms that are irrelevant to the motion to enforce will be kept secret." Harper, 2021 WL 3418350, at *5. Unlike in Harper, every term of the parties' settlement agreement is pertinent because Coleman disputes the existence of the agreement itself, and thus the existence of terms within the agreement. To resolve that dispute, the parties testified in open court regarding

their settlement negotiations and the terms of the settlement. Although the parties moved the court to seal their filings related to the motion to enforce, see [D.E. 77, 78, 81, 85], no party asked the court to seal the evidentiary hearing. Furthermore, the court's orders on Coleman's motions to dismiss and the parties' cross motions for summary judgment, see [D.E. 30, 34, 63], are not under seal, and this order resolving Sheppard's motion to enforce will not be under seal. Thus, the court will not enforce a confidentiality provision in the settlement agreement. See, e.g., Hewitt v. Dyck-O'Neal, Inc., No. DKC 20-1322, 2021 WL 3784867, at *4 (D. Md. Aug. 26, 2021) (unpublished); Copeland v. Dapkute, No. 8:17-cv-01566-PWG, 2018 WL 5619672, at *9 (D. Md. Oct. 30, 2018) (unpublished).

In some cases, litigants may attempt "gamesmanship whereby a litigant seeking to challenge a confidentiality provision can defeat such confidentiality simply by requiring the filing of a motion to enforce." Harper, 2021 WL 3418350, at *4; cf. United States v. Hallahan, 756 F.3d 962, 972–73 (7th Cir. 2014). Here, making this settlement agreement confidential would most benefit defendant Coleman. But Coleman himself put the settlement agreement at issue, and Coleman's desire to try the case shows that confidentiality is not a chief concern to him.

In light of the litigation over the motion to enforce, the court declines to enforce a confidentiality provision and instead enforces only the following terms from the settlement agreement: (1) the insurance pool shall pay $175,000 to Sheppard (through counsel); (2) the parties shall file a stipulation of dismissal with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1); and (3) Sheppard shall release Coleman, the Beaufort County Sheriff's Office, and all other defendants from any and all claims arising from the circumstances that prompted this action.

IV.

In sum, the court GRANTS plaintiff's motion to enforce the parties' settlement agreement [D.E. 75]. The court DIRECTS the parties to consummate their settlement not later than November 30, 2021, according to the terms and conditions the court found in the preceding paragraph. As part of the settlement, the parties shall file a stipulation of dismissal with prejudice. See Fed. R. Civ. P. 41(a)(1)(ii).

SO ORDERED. This 9 day of November, 2021.

JAMES C. DEVER III
United States District Judge