

1 Michele Yontef, in pro per
2 3661 N Campbell Ave # 102
3 Tucson, AZ 85719

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CLERK US DISTRICT COURT
DISTRICT OF ARIZONA
BY KT DEPUTY

4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE DISTRICT OF ARIZONA

6 Qwest Communications, International, Inc., a)
7 Delaware corporation,)
8 Plaintiff,)
9 vs.)
10 Michele Yontef, individually,)
11 Defendant)

Case No.: CIV 04 271 TUC DCB
Defendants Opposition and Requested Oral
Argument

13 DEFENDANT'S OPPOSITION TO MOTION TO ENFORCE SETTLEMENT AGREEMENT

15 ORAL ARGUMENT REQUESTED BY DEFENDANT

16 Plaintiff's motion should be denied in its entirety. Defendant, Michele Yontef, never
17 agreed to the terms of the settlement agreement that Plaintiff erroneously and misleadingly
18 claims the parties entered into. There was never a meeting of the minds between the parties
19 regarding the terms of settling this action.

20 Defendant does not dispute that settlement negotiations were entered into between the
21 parties. In fact, Defendant was the one who initiated settlement discussions believing that her
22 initial offer was extremely fair to Plaintiff. To Defendant's surprise, Plaintiff refused to accept
23 her initial offer to settle. See Declaration of Yontef, at ¶ 4. Plaintiff's refused to compensate
24 Defendant for the costs associated with the business set up and name and the costs associated
25 with litigating this matter. In essence, Plaintiff wants to obtain something for nothing. That is,

Defendant's Opposition & Request for Oral Hearing

1 Qwest wants to obtain ownership of a domain name and mark that properly belongs to Defendant
2 and to which Qwest has no legal ownership rights and should not obtain for free. See attached
3 Exhibit "B," Declaration of Bill Branscum). Plaintiff's way of seeking such ownership is to
4 engage in abuse of process tactics by, first of all, filing this frivolous action, then bringing this
5 entirely baseless motion, which it supports by introducing false and misleading evidence, and
6 ultimately, in essence, attempting to batter Defendant into submission.

7 Subsequently, the parties continued to attempt to settle this matter. Nevertheless, through
8 all their efforts they failed to reach an agreement. The fact that no agreement was entered into
9 by the parties is evidenced not only by Defendant's opposing papers, but also by the Plaintiff's
10 own moving papers. In particular, paragraph 4 of Plaintiff's motion and the letter referenced
11 therein (also submitted herein and attached hereto as Defendant's Exhibit "A"), which clearly
12 shows the parties never reached an agreement. In fact, what it does clearly show is Plaintiff's
13 rejection of Defendant's offer to settle. Plaintiff's counsel's letter of December 15, 2004, clearly
14 reads "I have spoken with my client and they agree to accept all changes made to the Settlement
15 Agreement, *with the exception of the following:*" (emphasis added); then Plaintiff's counsel go
16 on to state and list four (4) material issues that Defendant wanted in the settlement agreement to
17 which Plaintiff did not agree. Contrary to Plaintiff's position, this constitutes a rejection and not
18 an acceptance of Defendant's settlement offer.

19 Following Plaintiff's December 15, 2004 response to Defendant's counsel's December 13,
20 letter, Defendant decided that she was no longer interested in settling this matter and communicated
21 this instruction to her attorney, Tony Chen, Esq. See Declaration of Yontef, at ¶ 6. Defendant never
22 authorized Mr. Chen to accept the revised version of the settlement agreement prepared by Plaintiff
23 and sent to Mr. Chen on December 15th 2004. See Declaration of Yontef, at ¶ 7.

24 Contrary to Plaintiff's allegations, Defendant decided to "change her mind" (i.e., not to
25 settle with Plaintiff) shortly after December 15, 2005, and not on or about January 14, 2005, as

1 Plaintiff's falsely allege. In addition, Defendant, "changed her mind" not because of any
2 perspective purchase by ATT (as Plaintiff alleges) but instead, Defendant ultimately decided not
3 to further discuss settlement after engaging in several frustrating and futile rounds of
4 negotiations with Plaintiff and its counsel. See Declaration of Yontef, at ¶ 8. She also decided
5 that she was not going to give up her valuable domain name and trademark, which she rightfully
6 owns, to Plaintiff for free. See Declaration of Yontef, at ¶ 9. Defendant decided that settlement
7 talks were off as they were not going anywhere and she decided to dedicate herself to defend and
8 protect her rightfully owned Intellectual Propriety and assets (i.e., the name "Ma-Bell.com" for
9 private investigative services). Of course she was open to one last ditch effort to get in touch
10 with Plaintiff's General Counsel and discuss settling this matter but even then Plaintiff would not
11 agree to all terms so still and moreso all talks were off. Defendant did not know, however, that
12 Plaintiff would, once again, violate the Federal Rules of Evidenced by improperly disclosing to
13 this court the content of her offer to settle this case. Defendant was under the belief that all
14 settlement negotiations and offers to settle are not to be used as evidence.

15 Moreover, pursuant to Arizona Civil Code, Rule 80(d), it reads as follows:

16 "No agreement or consent between parties or attorneys in any matter is binding if
17 disputed, unless it is in writing, or made orally in open court, *and entered in the
minutes*". (emphasis added).

18 The court should note that Plaintiff conveniently decided to omit the last five words of
19 this Rule in paragraph 11 of its motion in an effort to again mislead this court. This Rule is
20 absolutely applicable to the instant motion and should be applied in Defendant's favor; that is,
21 there is no agreement or consent between the parties regarding settlement of this action. The
22 existence of a purported final settlement agreement and its terms are clearly, "in dispute." This
23 is not only supported by this motion but clearly supported by the evidence in this case and
24 Plaintiff's own motion. In paragraph 15 of Plaintiff's motion, it wants the court to believe that a
25 settlement agreement was reached in or around December 15, 2004 when in fact, **the letters that**


1 were exchanged between the parties attorneys at that time where clearly and unequivocally
2 a rejection of Defendant's offer to settle (See Exhibit "A").

3 Further it is important to note that just because Plaintiff drafts a document called
4 "Agreement" and says it is the final version and then insists that Defendant sign it even though
5 Defendant never agreed to its terms and refused to sign, doesn't mean that it embodies the final
6 agreed upon settlement.

7 In sum, Defendant never agreed to the existence and terms of the purported final settlement
8 agreement as drafted by Plaintiff's counsel. At no point during settlement discussions was there a
9 "meeting of the minds" between the parties. The terms and existence of a settlement agreement are
10 clearly in dispute. A settlement agreement was not entered in the minutes of this court (and should
11 not be entered), Defendant's attorney was never given the express authority by his client to agree
12 to or enter into the purported final agreement. See Declaration of Yontef, at ¶ 11.

13 For the forgoing reasons this court should deny Plaintiff's motion in its entirety and allow
14 Defendant her "day in court" to defend herself against Plaintiff's frivolous and meritless
15 accusations against her and keep the domain name that she so rightfully owns. Defendant
16 respectfully requests this court to award her all fees and costs incurred in opposing this motion.
17 Defendant also requests that this motion be set for oral hearing unless the court should decide to
18 rule in her favor based on these papers alone.


19 Respectfully submitted on this 6th day of April, 2005.

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22 _____
23 Michele Yontef, Defendant
24 3661 N Campbell Ave # 102
25 Tucson, AZ 85719

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 6th day of April, 2005, a true and accurate copy of "DEFENDANT'S OPPOSITION TO MOTION TO ENFORCE SETTLEMENT AGREEMENT & ORAL ARGUMENT REQUESTED BY DEFENDANT" was deposited in the U.S. Mail, postage prepaid, and addressed to the following individuals:



Peter D. Eisner
Mendelsohn, Oseran & Eisner, P.C.
2730 East Broadway Boulevard
Suite 100
Tucson, AZ 85716

Jeffrey H. Greenberg
Leonard Felker Altfeld Greenberg & Battaile, PC
250 North Meyer Avenue, P.O. Box 191
Tucson, AZ 85701-0191

Kurt Lewis
Lewis Meyers & Scheid LLC
2300 Fifteenth Street, Suite 320
Denver, CO 80202