

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FARMERS LLOYDS INSURANCE
COMPANY OF TEXAS

v.

HERMAN HAYNES and SHARLA
HAYNES

§
§
§
§
§
§
§


CIVIL ACTION NO. 3:23-CV-2209-S-BN

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. Defendants filed their Affidavit [ECF No. 49], which the Court construes as objections. The Court reviewed de novo those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

SO ORDERED.

SIGNED February 25, 2025.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FARMERS LLOYDS INSURANCE
COMPANY OF TEXAS,

Plaintiff,

V.

HERMAN HAYNES and SHARLA
HAYNES,

Defendants.

§
§
§
§
§
§
§
§
§
§

No. 3:23-cv-2209-S-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

This case has been referred to the undersigned United States magistrate judge for pretrial management pursuant to 28 U.S.C. § 636(b) and a standing order of reference from United States District Karen Gren Scholer. *See* Dkt. No. 9.

Plaintiff Farmers Lloyds Insurance Company of Texas (“Farmers”) has filed a Motion for Summary Judgment. *See* Dkt. No. 36.

Defendants Herman Haynes and Sharla Haynes, proceeding *pro se*, filed correspondence that the Court construes as response. *See* Dkt. No. 45.

For the reasons explained below, the Court should grant Farmers’s Motion for Summary Judgment [Dkt. No. 36].

Background

This case concerns the alleged breach of a settlement agreement reached between the parties.

Defendants Herman Haynes and Sharla Haynes held an automobile insurance policy through Metropolitan Lloyds Insurance Company of Texas (Policy No. 5322117360) (the “Policy”) and were involved in an automobile accident with an unknown driver in 2017. *See* Dkt No. 1 at 2. Defendants had uninsured motorist (“UM”) coverage under the Policy and made a claim for UM benefits. *See id.*

Farmers became the successor in interest to Metropolitan Lloyds Insurance Company of Texas. *See id.* at 3.

After resolution of Defendants’ UM claim was “delayed,” Defendants filed suit, *pro se*, against Farmers General Insurance Agency, Inc. in state court asserting claims for breach of contract and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act. *See* Dkt. No. 37-1. And, because Farmers General Insurance Agency, Inc. was not a proper party, the state court entered judgment in its favor. *See* Dkt No. 1 at 3.

Defendants then retained attorney Tim Schurmann with the Slocumb Law Firm, LLC. *See id.* And Defendants entered an attorney-client contract that authorized Mr. Schurmann to negotiate their claim or case. *See* Dkt. No. 37-16 at 2.

After exchanges of offers and counteroffers, counsel for Farmers and Defendants, through Mr. Schurmann, negotiated a resolution of the UM claim. *See id.*

Farmers agreed to pay Defendant Herman Haynes \$1,500.00 and Defendant Sharla Haynes \$162,500.00 in exchange for a full and final release of all claims. *See* Dkt. No. 37-15 at 3. And Mr. Schurmann confirmed the settlement via e-mail. *See*

Dkt. No. 37-10.

Farmers's counsel prepared a Compromise Settlement Agreement ("CSA"), *see* Dkt. No. 37-12, which provided for the compromise and release of the Defendants' UM claims, including "any causes of action or damages whether based in contract, tort, by statute, regulation, ordinance, or any other theory of legal recovery" resulting from the 2017 accident, Dkt. No. 37-15 at 4.

Mr. Schurmann agreed to the terms and executed the CSA. *See* Dkt. No. 37-12 at 15. And he picked up the settlement checks from Farmers's counsel to deliver to Defendants. *See* Dkt. No. 37-15 at 4.

Mr. Schurmann later advised Farmers's counsel that Defendants "declined to sign the [CSA], taking the position that they have not agreed to release any claims other than the UM claims under claim SLM64011 YN." Dkt. No. 37-14 at 2.

Farmers then filed this lawsuit and alleges that Defendants' failure to execute the settlement agreement reached between counsel constitutes a breach of contract. *See* Dkt. No. 1. And it seeks specific performance. *See id.*

Farmers then filed this Motion for Summary Judgment [Dkt. No. 36].

Legal Standards

Under Federal Rule of Civil Procedure 56, summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A factual "issue is material if its resolution could affect the outcome of the action." *Weeks Marine, Inc. v. Fireman's Fund Ins. Co.*, 340 F.3d 233, 235 (5th Cir. 2003). "A factual dispute is

‘genuine,’ if the evidence is such that a reasonable [trier of fact] could return a verdict for the nonmoving party.” *Crowe v. Henry*, 115 F.3d 294, 296 (5th Cir. 1997).

If the moving party seeks summary judgment as to his opponent’s claims or defenses, “[t]he moving party bears the initial burden of identifying those portions of the pleadings and discovery in the record that it believes demonstrate the absence of a genuine issue of material fact, but is not required to negate elements of the nonmoving party’s case.” *Lynch Props., Inc. v. Potomac Ins. Co.*, 140 F.3d 622, 625 (5th Cir. 1998). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” FED. R. CIV. P. 56(c)(1). “Summary judgment must be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which it will bear the burden of proof at trial. If the moving party fails to meet this initial burden, the motion must be denied, regardless of the nonmovant’s response.” *Pioneer Expl., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014) (internal quotation marks and footnote omitted).

“Once the moving party meets this burden, the nonmoving party must set forth” – and submit evidence of – “specific facts showing a genuine issue for trial and

not rest upon the allegations or denials contained in its pleadings.” *Lynch Props.*, 140 F.3d at 625; *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); accord *Pioneer Expl.*, 767 F.3d at 511 (“[T]he nonmovant cannot rely on the allegations in the pleadings alone” but rather “must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial.” (internal quotation marks and footnotes omitted)).

The Court is required to consider all evidence and view all facts and draw all reasonable inferences in the light most favorable to the nonmoving party and resolve all disputed factual controversies in favor of the nonmoving party – but only if the summary judgment evidence shows that an actual controversy exists. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Pioneer Expl.*, 767 F.3d at 511; *Boudreaux v. Swift Transp. Co., Inc.*, 402 F.3d 536, 540 (5th Cir. 2005); *Lynch Props.*, 140 F.3d at 625. “The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [her] favor. While the court must disregard evidence favorable to the moving party that the jury is not required to believe, it gives credence to evidence supporting the moving party that is uncontradicted and unimpeached if that evidence comes from disinterested witnesses.” *Porter v. Houma Terrebonne Hous. Auth. Bd. of Comm’rs*, 810 F.3d 940, 942-43 (5th Cir. 2015) (internal quotation marks and footnotes omitted). And “[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment,” *Brown v. City of Houston*, 337 F.3d 539, 541 (5th Cir. 2003), and neither will “only a scintilla of evidence” meet the nonmovant’s burden, *Little*, 37 F.3d

at 1075; accord *Pioneer Expl.*, 767 F.3d at 511 (“Conclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial.” (internal quotation marks and footnote omitted)).

“[W]hen the moving party has carried its burden under [Federal Rule of Civil Procedure] 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (internal quotation marks omitted).

Rather, the non-moving party must “set forth specific facts showing the existence of a ‘genuine’ issue concerning every essential component of its case.” *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998). “If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it; or (4) issue any other appropriate order.” FED. R. CIV. P. 56(e). And “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Pioneer Expl.*, 767 F.3d at 511 (internal quotation marks and footnote omitted). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that

there be no genuine issue of material fact.” *Scott*, 550 U.S. at 380 (internal quotation marks and emphasis omitted). And, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

“After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted.” *DIRECTV, Inc. v. Minor*, 420 F.3d 546, 549 (5th Cir. 2005) (footnote and internal quotation marks omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Scott*, 550 U.S. at 380 (internal quotation marks omitted).

The Court will not assume “in the absence of any proof ... that the nonmoving party could or would prove the necessary facts” and will grant summary judgment “in any case where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant.” *Little*, 37 F.3d at 1075. “Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party’s opposition to summary judgment,” and “[a] failure on the part of the nonmoving party to offer proof concerning an essential element of its case necessarily renders all other facts immaterial and mandates a finding that no genuine issue of fact exists.” *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006) (internal quotation marks omitted).

If, on the other hand, “the movant bears the burden of proof on an issue, either

because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure *all* of the essential elements of the claim or defense to warrant judgment in his favor.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). The “beyond peradventure” standard imposes a “heavy” burden. *Cont’l Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, No. 3:04-cv-1866-D, 2007 WL 2403656, at *10 (N.D. Tex. Aug. 23, 2007). The moving party must demonstrate that there are no genuine and material fact disputes and that the party is entitled to summary judgment as a matter of law. *See, e.g., Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 412 (5th Cir. 2003). On such a motion, the Court will, again, “draw all reasonable inferences in favor of the non-moving party.” *Chaplin v. NationsCredit Corp.*, 307 F.3d 368, 372 (5th Cir. 2002).

Analysis

I. Subject matter jurisdiction

Diversity jurisdiction under 28 U.S.C. § 1332 is the only basis for federal subject matter jurisdiction that Farmers invokes in its Complaint. *See* Dkt. No. 1.

The United States Court of Appeals for the Fifth Circuit recently explained that, in a diversity case under 28 U.S.C. § 1332,

- “[a]t the pleading stage, the party invoking the federal court’s jurisdiction must allege the citizenship of each” party;
- “[a]t the summary judgment stage,” the party invoking the federal court’s jurisdiction “must provide evidence sufficient to support a jury finding of the citizenship of” each party; and,
- “at trial,” the party invoking the federal court’s jurisdiction “must prove the citizenship of each” party.

Megalomedia Inc. v. Philadelphia Indem. Ins. Co., 115 F.4th 657, 659 (5th Cir. 2024) (published order); *accord J.A. Masters Invs. v. Beltramini*, 117 F.4th 321, 323 (5th Cir. 2024) (published order); *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 315 n.* (5th Cir. 2019).

The Fifth Circuit has also long held that district courts can and should do their own fact-finding and final determinations on their subject-matter jurisdiction over a case at any stage, including before summary judgment. *See Dillon v. Rogers*, 596 F.3d 260, 271 (5th Cir. 2010) (“Judges have the power to resolve certain threshold issues without the participation of a jury before the adjudication of a case on its merits. For example, when subject matter jurisdiction over a case turns on disputed facts, judges have the power to resolve these disputes in assuring themselves of their courts’ jurisdiction.”); *Edwards v. Associated Press*, 512 F.2d 258, 262 n.8 (5th Cir. 1975) (“Consideration of affidavits and, where necessary, the taking of testimony are appropriate means for resolving jurisdictional disputes.”). And, when district courts determine “the existence of subject matter jurisdiction in fact,” the courts do not proceed under the strictures, burdens, or standards that apply to motions under Federal Rules of Procedure 12(b)(6) and 56, such as attaching “presumptive truthfulness ... to [a] plaintiff’s [or removing defendant’s] allegations.” *Chatham Condo. Associations v. Century Vill., Inc.*, 597 F.2d 1002, 1012 (5th Cir. 1979) (cleaned up). A district court is instead “free to weigh the evidence and satisfy itself as to the existence of its power to hear the case”; “the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional

claims”; and the party invoking the federal court’s jurisdiction “will have the burden of proof that jurisdiction does in fact exist.” *Id.* (cleaned up).

And, so, to comply with this governing law, Farmers must provide evidence sufficient to support a jury finding of the citizenship of each party or for the Court to evaluate and determine on its own the citizenship of each party.

“Settled Texas law provides that a group of underwriters may form an association and sell insurance policies through an attorney in fact or other representative.” *Etan Indus., Inc. v. The Travelers Lloyds Ins. Co.*, No. CIV.A. 3:07-cv-1580B, 2008 WL 1869216 (N.D. Tex. Apr. 28, 2008) (cleaned up). “Such an association of underwriters is commonly known as a ‘Lloyd’s plan’ and is most properly viewed as an unincorporated association.” *Id.* (cleaned up).

Farmers states that it is an unincorporated Lloyds association operating under Chapter 941 of the Texas Insurance Code. *See* Dkt. Nos. 47 at 6-7 & 47-1 at 2.

The Fifth Circuit has held that “such unincorporated associations have the citizenship of their underwriter members.” *Tyler v. State Farm Lloyds*, No. 3:14-CV-1280-M, 2014 WL 12678306, at *2 (N.D. Tex. Nov. 10, 2014) (citing *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5th Cir. 1993)). And, so, for purposes of determining diversity jurisdiction, “[o]nly the underwriters ... are considered members of the organization.” *Id.*

For natural persons, Section 1332 citizenship is determined by domicile, which requires residency plus an intent to make the place of residency one’s permanent home. *See SXSXW, L.L.C. v. Fed. Ins. Co.*, 83 F.4th 405, 407 (5th Cir. 2023).

Farmers contends that, because its eleven underwriters at the time of filing of this matter were domiciled in and citizens of California, Illinois, Ohio, and Rhode Island, Farmers's citizenship is of those states. *See* Dkt. No. 47 at 9. And it alleges that Defendants Herman Haynes and Sharla Haynes are both domiciled in and citizens of Texas. *See* Dkt. No. 47 at 4.

To support its own citizenship allegations, Farmers provides an affidavit from one of its underwriters, which states:

At the time of the filing of this matter (the relevant period for determining diversity), the then-eleven (11) underwriters all resided, were domiciled in, and citizens of the following states:

a. State of California:

Nicole Pryor
Pete Klute
Tim Henry

b. State of Illinois:

Jane Brown
Kelly Arachikavitz

c. State of Ohio:

Spring Brandon

d. State of Rhode Island:

Briana Crowley
Shane Kirkland
Kevin Flynn
Ellen Tierney
Mike Bednarick

Dkt. No. 47-1 at 3-4.

To support Defendants' citizenship allegations, Farmers provides evidence that Herman Haynes and Sharla Haynes reside in Dallas, Texas. *See* Dkt. No. 47 at 4-5; *see Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 799 (5th Cir. 2007) (explaining that "[r]esidence alone is not the equivalent of citizenship, although the place of residence is prima facie the domicile" (cleaned up)). And Farmers submits evidence that Herman Haynes and Sharla Haynes have Texas driver's licenses, are registered to vote in Texas, and own property and maintain businesses in the state. *See* Dkt. No. 47 at 4-5; *see also* Dkt. Nos. 17 & 18; *see generally Coury v. Prot.*, 85 F.3d 244, 251 (5th Cir. 1996).

Based on the evidence provided, the undersigned finds that Farmers is a citizen of California, Illinois, Ohio, and Rhode Island, and Defendants are citizens of Texas. And, so, the Court should find that Farmers has satisfied its burden of proof regarding the citizenship of the parties in this action.

II. Defendants' Filings

A. December 12, 2023 Correspondence

On December 12, 2023, Defendants filed correspondence with the Court. *See* Dkt. No. 24. In their letter, Defendants request "a dismissal on the grounds that [they] did not sign any agreement or contract with Farmers." *Id.* at 2.

Specifically, Defendants assert that their counsel "failed to full inform [them] of the verbal conversations and verbal agreement" with opposing counsel regarding settlement negotiations "beyond that of a financial amount." *Id.* Defendants discharged the attorney, declined the settlement checks, and did not sign the CSA.

See id. And, so, Defendants contend they “had no contract to breach.” *Id.*

The undersigned construes this document as a motion to dismiss on the grounds that Defendants did not enter a binding contract with Farmers.

But, for the reasons discussed below, the Court should deny Defendants’ motion to dismiss [Dkt. No. 24].

B. June 26, 2024 Correspondence

After Farmers filed its motion for summary judgment, the undersigned entered a Supplemental Scheduling Order, which required Defendants to file their response by June 27, 2024. *See* Dkt. No. 38.

On June 26, 2024, Defendants filed additional correspondence with the Court. *See* Dkt. No. 45. The filing included an affidavit, *see id.* at 1-3, which purported to authenticate various exhibits referenced in Defendants’ letter, *see id.* at 4-76.

The letter reiterates the circumstances that led to Defendants refusing to sign the CSA and terminating their counsel. *See id.* at 77. And Defendants request an investigation for “fraud.” *Id.*

To the extent Defendants’ request is an attempt to plead a counterclaim for fraud against Farmers, “[i]t is well-established that a claim raised for the first time in the context of a summary judgment motion is not properly before the court.” *Harmon v. Dallas Cnty., Texas*, 294 F. Supp. 3d 548 (N.D. Tex. 2018) (citing *Cutrerera v. Board of Supervisors of La. State Univ.*, 429 F.3d 108, 113 (5th Cir. 2005)).

Defendants’ filing does not directly address Farmers’s summary judgment arguments. But Defendants state that their counsel “did not show [them] any

paperwork until after a verbal financial amount was accepted” and Defendants informed counsel that “they were not going to sign and gave him a letter of termination.” Dkt. No. 45 at 77.

And, so, the undersigned construes Defendants’ filing as a response contending that summary judgment is not appropriate because Defendants did not enter a binding contract with Farmers.

III. Farmers’s Breach of Contract Claim

Farmers asserts a claim against Defendants for breach of contract. It alleges that Defendants breached the settlement agreement reached between their counsel and Farmers by refusing to sign the CSA or accept tender of the settlement checks. *See* Dkt. No. 37 at 12.

Under Texas law, to succeed on a breach of contract claim, the plaintiff must show “(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach.” *Smith Intern., Inc. v. Egle Group, LLC*, 490 F.3d 380, 387 (5th Cir. 2007). “A breach occurs when a party fails or refuses to do something he has promised to do.” *Synergy Advisory Servs., LLC v. ClearPrism, LLC*, No. 3:22-cv-1699-BH, 2023 WL 5725537, at *2 (N.D. Tex. Sept. 5, 2023) (cleaned up). Under Texas law, “[w]hether a party has breached a contract is a question of law for the court.” *X Techs., Inc. v. Marvin Test Sys., Inc.*, 719 F.3d 406, 413 (5th Cir. 2013) (cleaned up). More specifically, “[w]hat constitutes a breach of contract is a question of law, but whether the breaching conduct occurred is a question of fact.”

Matter of Dallas Roadster, Ltd., 846 F.3d 112, 127 (5th Cir. 2017).

Defendants contend they never entered a binding contract with Farmers. *See* Dkt. No. 24 at 2. Specifically, Defendants allege that they “had no contract to breach” because they refused to sign the CSA or accept the settlement checks. *Id.*

And, so, the dispute here is whether Farmers and Defendants entered a binding contract and, specifically, the settlement agreement negotiated between Farmers and Defendants’ counsel.

A. Contract Formation

“Forming a valid contract under Texas law requires: (1) an offer, (2) acceptance in strict compliance with the terms of the offer, (3) a meeting of the minds, (4) each party’s consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding.” *U.S. Bank Nat’l Ass’n v. Richardson*, No. 3:17-cv-2271-L, 2019 WL 1115059, at *3 (N.D. Tex. Mar. 11, 2019) (cleaned up). And, under Texas law, “courts have long held that the essential terms for a settlement agreement are the amount of compensation and the liability to be released.” *Young v. Ershick*, 617 F. Supp. 3d 563, 581-82 (E.D. Tex. 2022) (cleaned up).

Farmers asserts that “all [] the essential elements of a binding settlement agreement exist. Dkt. No. 37 at 11.

Farmers states that the email correspondence between counsel shows that negotiations were taking place. *See id.* Defendants’ counsel sent letters advising that he was demanding \$35,000 to settle Herman Haynes’s claim and \$250,000 to settle Sharla Haynes’s claim. *See* Dkt. Nos. 37-4 & 37-5. Farmers offered \$100,000 “in full

and final settlement” of the UM claim. Dkt. No. 37-6.

Counsel exchanged offers and counteroffers, *see* Dkt. Nos. 37-7, 37-8, & 37-9, until Defendants’ counsel accepted sums of \$162,500 and \$1,500 on his clients’ behalf and confirmed the settlement via e-mail, *see* Dkt. No. 37-10.

Farmers’s counsel prepared the CSA, *see* Dkt. No. 37-12, which provided for a full and final release of claims, and Defendants’ counsel executed the CSA, *see* Dkt. No. 37-12 at 15. And Farmers provided Defendants’ counsel with the settlement checks to deliver to Defendants. *See* Dkt. No. 37-15 at 4.

Based on the summary judgment evidence, there was an offer by Farmers, acceptance by Defendants’ counsel, a meeting of the minds, consent as shown by Defendants’ counsel’s execution of the CSA, and delivery of the CSA. And the CSA contains the material terms: the amount of compensation and the liabilities to be released.

And, so, Farmers has demonstrated that a valid, binding settlement agreement was formed.

This case does not involve a motion to enforce a settlement agreement under Texas Rule of Civil Procedure 11, which governs the enforcement of settlement agreements in Texas diversity cases. *See Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 266 (5th Cir. 1995). Rule 11 provides, in relevant part, “no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record.” TEX. R. CIV. P. 11.

To the extent that Rule 11 applies here, the Court should find that its

requirements are met because the CSA [Dkt. No. 37-12] is in writing, signed by Defendants' counsel, and filed as part of the record. *See Crawford v. Allstate Tex. Lloyd's*, No. 9:10-CV-127, 2012 WL 215178, at *1 (E.D. Tex. Jan. 23, 2012) ("An attorney may sign a settlement agreement on behalf of his client.").

B. Defendants' Counsel's Authority

Defendants contend that the settlement agreement is not binding on them because they did not sign the CSA. *See* Dkt. No. 24 at 2. And they allege that they "verbally accepted an offer of funds" without knowing the full extent of the claims they would be releasing in exchange. *Id.*

Farmers asserts that Defendant's counsel had actual or apparent authority to bind them. *See* Dkt. No. 37 at 12.

"It is well settled that a party may clothe his attorney with actual or apparent authority to reach and sign a settlement agreement that binds the client." *Sidamon-Erestavi v. Derech, Inc.*, No. 3:02-cv-683-N, 2004 WL 2158129 (N.D. Tex. Sept. 24, 2004) (citing *West Beach Marina, Ltd. v. Erdeljac*, 94 S.W.3d 248, 256 (Tex. App. – Austin, 2002, no pet. h.)). And "[t]he client will be bound by the settlement agreement when his attorney is clothed with actual or apparent authority to enter into the agreement." *Crawford*, 2012 WL 215178, at *1 (cleaned up).

Texas federal courts applying state law and Texas appellate courts have used different, but similar, standards regarding whether an attorney had authority to enter into a settlement agreement on a client's behalf.

In the context of a motion to enforce a settlement agreement, Texas federal

courts sitting in diversity have indicated that “an attorney of record is presumed to have authority to compromise and settle litigation of his client, ... and an agreement by the attorney of record will be set aside only upon affirmative proof of the party seeking to vacate the [agreement] that the attorney had no right to consent to its entry.” *Sanchez v. Aldi (Texas) LLC*, No. 3:21-cv-165-K, 2022 WL 2240409, at *2 (N.D. Tex. June 2, 2022) (citing *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 390 (5th Cir. 1984)).

The Dallas Court of Appeals, in reviewing whether summary judgment was appropriate in a suit to enforce a settlement agreement, recently stated that “[a] rebuttable presumption exists that an attorney retained for litigation possesses the authority to enter into a settlement agreement on behalf of a client.” *Tessmer Law Firm, P.L.L.C. v. Carrillo*, No. 05-23-00181-CV, 2024 WL 1431149 (Tex. App. – Dallas Apr. 3, 2024, pet. filed) (cleaned up). And “[t]he presumption may be rebutted by evidence that the client did not authorize the attorney to enter into the settlement.” *Id.* (citing *Strad Energy Servs. USA, Ltd. v. Bernal*, No. 04-16-00116-CV, 2016 WL 6242839, at *3 (Tex. App. – San Antonio Oct. 26, 2016, pet. denied)).

In *Tessmer*, the plaintiff/summary judgment movant was “required to establish affirmatively that there was no genuine issue of material fact that [the law firm] was authorized to release [Defendants’] claims in exchange for the sum demanded; that is, that [Defendants] could not produce evidence to rebut a presumption of authority.” *Id.* (quoting *Chavez v. Kansas City S. Ry. Co.*, 520 S.W.3d 898 (Tex. 2017)). This is consistent with the principle that “a summary judgment movant may not use a

presumption to shift to the non-movant the burden of raising a fact issue of rebuttal.”
Chavez, 520 S.W.3d at 900.

The undersigned analyzes the facts of this case under both standards to determine whether Farmers has satisfied its summary judgment burden.

Farmers points to the attorney-client contract in which Defendants entered with their counsel, which states the “[c]lient hereby authorizes [a]ttorney to negotiate [c]lient’s claim/case.” Dkt. No. 37-16 at 2. And Farmers offers evidence of Defendants’ counsel’s correspondence showing (1) a December 7, 2022 letter announcing his representation of Defendants and revoking any previously signed medical releases, *see* Dkt. No. 37-3; (2) separate settlement demands on behalf of both clients seeking to resolve their UM claims, *see* Dkt. Nos 37-3 & 37-4; and (3) a counteroffer, which states “I am authorized to counter your offer of \$125k with a new demand for \$200k,” Dkt. No. 37-9.

The attorney-client representation agreement and correspondence show Defendants’ counsel’s authority to act on Defendants’ behalf.

Farmers contends that it “engaged in settlement negotiations and ultimately reached agreement with Defendants’ counsel” in reliance of his actual or apparent authority. Dkt. No. 37 at 16. And “it is reasonable for the lawyer and the opposing litigant to rely on the lawyer’s use of such authority.” *Smedley v. Temple Drilling Co.*, 782 F.2d 1357 (5th Cir. 1986).

Defendants allege they were mistaken as to whether the settlement was intended to resolve all matters and, for that reason, refused to sign the CSA and

accept the settlement checks. But this allegation does not support a contention that Defendants' counsel lacked authority to enter a settlement on their behalf or had no right to consent to the settlement agreement.

And, so, the Court should find that Farmers has met its summary judgment burden to establish there was no genuine dispute of material fact that Defendants' counsel was authorized to enter a settlement on their behalf.

As to the remaining elements of Farmers's breach of contract claim, it has shown tender of performance by forwarding the CSA and delivering the checks to Defendants' counsel; that Defendants breached by refusing to sign the CSA or accept tender of the settlement checks; and that it has sustained damages. *See* Dkt. No. 37 at 11-12.

And, so, the Court should find that Farmers is entitled to judgment as a matter of law.

C. Specific Performance

Farmers seeks specific performance on its breach of contract claim.

To be entitled to specific performance, the claimant must establish that it "cannot be fully compensated through the legal remedy of damages or [that] damages may not be accurately ascertained," *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 153 (5th Cir. 2004), that it was "ready, willing, and able to timely perform" contractual obligations," and that it performed or tendered performance, *Longhorn Integrity Inspection Servs., L.L.C. v. McCurdy*, 738 F. App'x 273, 275 (5th Cir. 2018) (quoting *DiGiuseppe v. Lawler*, 269 S.W.3d 588, 593 (Tex. 2008)); *Chapman v.*

Olbrich, 217 S.W.3d 482, 491 (Tex. App. – Houston [14th Dist.] 2006, no pet.) (cleaned up).

Here, Farmers has met the requirements for specific performance.

Farmers states that “it cannot be made whole by a damages award alone.” Dkt. No. 37 at 18. And Texas courts have found that specific performance is appropriate in cases involving a settlement agreement. *See e.g., Young v. Ershick*, 617 F. Supp. 3d 563 (E.D. Tex. 2022); *Jennings v. Jennings*, 625 S.W.3d 854 (Tex. App. – San Antonio 2021, pet. denied).

Farmers has shown its readiness and willingness to perform and that it tendered performance by forwarding the CSA and delivering the settlement checks to Defendants’ counsel. *See* Dkt. No. 37-15 at 4.

And, so, the Court should find Farmers is entitled to specific performance.

Farmers asks the Court to order that “Defendants execute the CSA and accept the payments therein in full and final settlement of their claims for UM benefits, including any and all claims or causes of action against Farmers arising from the accident with the alleged tortfeasor.” Dkt. No. 37 at 18. And Farmers notes that, because Defendants’ former counsel holds a lien on any recovery, “any check must be made payable to the Defendants and their former counsel jointly.” *Id.*

But courts have found an order of specific performance concerning only Defendants’ obligations to be improper. *See Young* 617 F. Supp. 3d at 595 (citing *Woody v. J. Black’s, LP*, No. 03-15-00293-CV, 2016 WL 3677241 (Tex. App. – Austin July 7, 2016, no pet.) (“[A] court’s order of specific performance of a contract must

compel performance by both parties, rather than ordering only one party to specifically perform.”)).

And, so, the Court should find that Defendants shall:

- a. Execute and return the CSA; and
- b. Accept payments provided for in the CSA in full and final settlement of their claims for UM benefits, including any and all claims or causes of action against Farmers arising from the accident with the alleged tortfeasor.

And, Farmers shall:

- a. Make a check for \$1,500.00 payable to Defendant Herman Haynes and former counsel jointly; and
- b. Make a check for \$162,500.00 payable to Defendant Sharla Haynes and former counsel jointly.

Conclusion

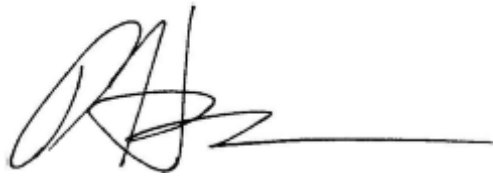
The Court should grant Farmers’s Motion for Summary Judgment [Dkt. No. 36] and enter a final judgment in favor of Farmers and against Defendants upon its breach of contract claim.

The Court should also deny Defendants’ Motion to Dismiss [Dkt. No. 24].

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV.

P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: January 29, 2025

A handwritten signature in black ink, appearing to read 'D. Horan', with a long horizontal line extending to the right.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE