THIRD JUDICIAL DISTRICT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JORDAN BREE RIGHTER, Plaintiff, v. TIMOTHY BALLARD, an individual and as the ALTER-EGO of OPERATION UNDERGROUND RAILROAD, INC., a Utah non-profit corporation; and as the ALTER-EGO OF DEACON, INC., a Nevada corporation; MATTHEW COOPER, an individual, Defendants.	**MEMORANDUM DECISION AND ORDER ON DEFENDANT MATTHEW COOPER'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND PLAINTIFF'S JOINT MOTION TO RECONSIDER JUNE 27, 2024 RULING AND OPPOSING DEFENDANT MATTHEW COOPER'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** Case No. 230908862 Judge Kristine Johnson

Before the Court is Defendant Matthew Cooper's Motion to Dismiss Plaintiff's Complaint and Plaintiff's Joint Motion to Reconsider June 27, 2024 Ruling and Opposing Defendant Matthew Cooper's Motion to Dismiss Plaintiff's Complaint. For the following reasons, the Motion to Dismiss is granted and the Motion to Reconsider is denied.

Background

A factual background was set forth in the Court's June 27, 2024 Memorandum Decision. This includes the pre-October 2021 British Virgin Islands trip and the October 2021 Salt Lake training that comprise the basis of Plaintiff's claims, as well as the execution of the Independent Contractor Agreement dated February 2, 2022 that was to be effective February 12, 2022 to March 12, 2022. In that Decision, the Court held that the Release of Liability contained in paragraph 7.2 of the Independent Contractor Agreement barred Plaintiff's claims. It also held that, alternatively, Plaintiff's claims against OUR and Ballard for Conspiracy, Negligence and Premises Liability and her claim against Ballard for Fraud were subject to dismissal without prejudice.

Plaintiff's Motion to Reconsider

Plaintiff now seeks reconsideration of the June ruling. Plaintiff seeks alternative forms of relief: (1) reconsideration of the ruling that the Independent Contractor Agreement bars Plaintiff's claims; (2) reconsideration of the ruling that Section 7.2 of the Independent Contractor Agreement is unambiguous; (3) reconsideration of the Court's dismissal with prejudice pursuant to the Independent Contractor Agreement, such that Plaintiff could attempt to "plead around" the Agreement; and (4) a finding that claims for fraud, gross negligence, assault and battery are not barred.

First, motions for reconsideration are not expressly authorized by the Utah Rules of Civil Procedure and the Supreme Court of Utah has noted that they are "discouraged." *See Gillett v. Price*, 135 P.3d 861, 863 (Utah 2006). While the Court is not required to entertain a motion to amend, if it elects to do so factors it may consider include the following: " [whether] (1) the matter being presented in a new or different light, (2) a change in the governing law, (3) the discovery of new evidence, or (4) a conviction that the prior decision was clearly erroneous." *Colony Ins. Co. v. Human Ensemble, LLC*, 299 P.3d 1149, 1152 (Ut. Ct. App. 2013). Here, the Court will consider the motion for reconsideration on the merits.[1]

[1] Defendants correctly note that Plaintiff combined the Motion for Reconsideration with the Opposition to Matthew Cooper's Motion to Dismiss in violation of Rule 7(n) of the Utah Rules of Civil Procedure. While it would be appropriate to strike the Motion for that reason, considering the Motion at this point is in the interest of judicial economy, particularly because the arguments in the motion mirror the arguments made in opposition to the Motion to Dismiss.

Plaintiff's arguments in support of the request for reconsideration of the Court's determination that the Independent Contractor Agreement bars her claims, or that Section 7.2 of the Independent Contractor Agreement is unambiguous were either fully vetted or should have been raised previously. Specifically, the Court found that Section 7.2 is clear and unambiguous and that the first sentence releases any claims Righter had at the time she executed the agreement while the second sentence pertains to claims that may arise based upon work she performed under the agreement. The parties argued the import of the term "now have or may" in the second sentence, and the Court specifically held that the two sentences read in conjunction with other pursuant to principles of contractual interpretation supports the conclusion set forth in the Opinion.

Plaintiff now urges the Court to consider relevant extrinsic evidence to determine whether an ambiguity exists, making this issue inappropriate for resolution on a Motion to Dismiss. *See Ward v. Intermountain Farmers Ass'n*, 907 P.2d 264 (Utah 1995); *Daines v. Vincent*, 190 P.3d 1269 (Utah 2008). However, as the United States District Court for the District of Utah noted in *LifeVantage Corp. v. Domingo*, Case No. 2:13-cv-1073, 2016 U.S. Dist. LEXIS 189313, "*Ward* and *Daniels* appear to be aberrations that do not accurately describe current Utah law on determining whether a contract is facially ambiguous . . . . *Ward* and Daines are irreconcilable with the Utah Supreme Court's more recent pronouncements on the subject." *Id*. at *26. *See Mind & Motion Investments, LLC v. Celtic Bank Corp.,* 367 P.3d 994, 1001 (Utah 2016) ("[w]hen interpreting a contract, our task is to ascertain the parties' intent. And the best indication of the parties' intent is the ordinary meaning of the contract's terms. Accordingly, "[i]f the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law." A contract is facially ambiguous if its terms are "capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies." But terms are not ambiguous "simply because one party seeks to endow them with a different interpretation according to his or her own interests."") (internal citations omitted). In light of this authority, the Court will not reconsider its prior ruling on this issue.

Plaintiff next argues for amendment of the dismissal based upon the release to one without prejudice. Plaintiff argues that the release should be rescinded and/or voided on the basis of fraud (in the execution and/or inducement), mistake, or unconscionability. Defendants correctly note that Plaintiff has not filed a Motion to Amend or attached a proposed Amended Complaint, as required by Rule 15(a) of the Utah Rules of Civil Procedure. Nonetheless, Defendants assert that any such amendment would be futile and accordingly should not be permitted.

In support of their futility argument, Defendants point to the high burden that must be met to demonstrate mutual mistake or unconscionability, and Plaintiff's own prior acknowledgments through counsel regarding a lack of fraud in the inducement. However, their primary argument is that amendment would be futile because Plaintiff did not promptly move to rescind the Agreement as required by Utah law. There is no dispute that one who seeks rescission must do so promptly. *Farrington v. Granite State Fire Ins. Co. of Portsmouth*, 232 P.2d 754, 758 (Utah 1951) ("One who claims a right of rescission must act with reasonable promptness, and if after such knowledge, he does any substantial act which recognizes the contract as in force . . . such an act would usually constitute a waiver of his right to rescind."); *Evanston Ins. Co. v. Desert State Life Management*, 56 F.4th 899, 906 (10th Cir. 2022) ("a party seeking to rescind 'must promptly exercise it or [the] same will be waived.'").

Here, the Agreement was dated February 2, 2022, over three years ago. Plaintiff's Complaint was filed on November 20, 2023. The Complaint did not include a claim for rescission.[2] Defendants OUR, Deacon and Ballard filed Motions to Dismiss on February 7 and February 15, 2024. .Defendants' first argument was that the Agreement barred Plaintiff's claims: "[Plaintiff's] suit must be dismissed in its entirety against O.U.R. and Deacon because she released all claims and agreed not to sue when she signed her Independent Contractor Agreement. When the intent to relieve a party from liability is clearly and unequivocally expressed in a contractual provision, courts will enforce that provision." Dkt. # 39 at 5. Plaintiff opposed the Motion, but did not argue that the Agreement should be rescinded. Nor did Plaintiff make any such argument at the June 5, 2024 hearing.

Plaintiff contends that she was not aware that Defendants would argue "both sentences" of the Release at oral argument and accordingly did not seek rescission. However, Defendants' Reply in Support of their Motion to Dismiss specifically states that Plaintiff's opposition "ignores that Section 7.2 contains two different sentences, each of which individually sets out a universe of release and waived claims. . . . [t]he first and second sentences are not mutually exclusive, nor is there ambiguity in this section of the Agreement. The second sentence merely complements and builds on the first." Dkt. # 67 at 4-5.

Under these circumstances, the Court finds that amendment would be futile because Plaintiff did not act promptly to exercise any purported right to rescind. Even if Plaintiff's counsel was not aware of the existence of the Agreement when the Complaint was filed (and assuming that such lack of knowledge should excuse the failure to immediately seek rescission), Plaintiff at

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[2] In this regard, this case is unlike *Borys v. Timothy Ballard, et.a*l., Civil No. 230907663, where the Complaint alleged nonenforceability.

minimum should have sought rescission at the time of the summary judgment briefing, but did not do so. Plaintiff did not act with reasonable promptness in seeking rescission and cannot do so now.

Regarding Plaintiff's alternative request to allow amendment to assert gross negligence, again, Plaintiff has not filed a Motion to Amend in compliance with Rule 15. Absent such a motion and without any specific indication of exactly what such a claim would entail, the Court cannot issue any ruling on this request. Plaintiff may file a Motion in conformance with Rule 15 such that the parties may brief the implications of the release language.

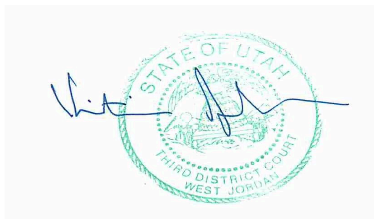
Cooper's Motion to Dismiss

In light of the prior ruling on the Motion for Summary Judgment, Defendant Cooper's Motion to Dismiss is granted. It is undisputed that Cooper was at all relevant times an employee of OUR. As such, he is covered by the release contained in the Agreement for the reasons set forth in the Court's June 27, 2024 Memorandum Decision and Order.

Plaintiff's fraud claim against Cooper fails because she has not identified any statements purportedly made by Cooper. As such, she has not "identified any false representation." *Fid. Nat. Title Ins. Co. v. Worthington*, 344 P.3d 156 (Utah Ct. App. 2015). Similarly, Plaintiff's conspiracy and negligence claims are subject to dismissal for the same reasons set forth in the June 27, 2024 Memorandum Decision.

It is so ordered.

DATED this 7th day of March, 2025.



BY THE COURT: HONORABLE KRISTINE JOHNSON
Third Judicial District, Salt Lake County
State of Utah, Salt Lake Department