



**ORDER NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

RAFAEL ABELLO,

Debtor.

Case No. 2:14-bk-23834-RK

Chapter 7

Adv. No. 2:14-ap-01695-RK

ARTURO HERNANDEZ and  
MARIA ESTELA HERNANDEZ,

Plaintiffs,

vs.

RAFAEL ABELLO,

Defendant.

**ORDER DISAPPROVING  
UNILATERALLY SUBMITTED SO-  
CALLED "STIPULATION FOR  
SETTLEMENT" AND PROPOSED  
ORDER RESERVING JURISDICTION  
WITHOUT DISMISSAL, TENTATIVE  
RULING ON APPROVAL OF  
SETTLEMENT WITH COURT'S  
CONDITIONS, AND RESETTING  
STATUS CONFERENCE AS  
PRETRIAL CONFERENCE**

The court has reviewed the so-called "Stipulation for Settlement," filed on August 21, 2015 by Edward A. Villalobos, of the Law Offices of Villalobos & Associates. The so-called "Stipulation for Settlement" was not exactly a stipulation because it was only signed by counsel for one side, Mr. Villalobos, who represents Plaintiffs, and thus, was his unilateral submission on behalf of Plaintiffs as there was no signature by Defendant or Defendant's counsel, Raymond Guitan. Attached to the so-called "Stipulation for Settlement" was a "Memorandum of Settlement" signed and dated by the parties and

1 both counsel, Mr. Villalobos for Plaintiffs and Mr. Gaitan for Defendant, on July 24, 2015.  
2 The so-called "Stipulation for Settlement" was accompanied by a proposed "Order  
3 Reserving Jurisdiction over Settlement," lodged on August 21, 2015, and unilaterally  
4 submitted by Mr. Villalobos as indicated by the fact that the order was submitted on  
5 pleading paper with his letterhead, but no signature by either counsel.

6         The court indicated to the parties who appeared by counsel at the status  
7 conference on August 18, 2015 after being advised that the parties had reached a  
8 settlement that in order to dispose of the adversary proceeding, the court would either:  
9 (1) enter a judgment based on the settlement; or (2) enter an order dismissing the  
10 adversary proceeding by reason of settlement, but reserving (or retaining) jurisdiction if  
11 there is a dispute regarding enforcement of the settlement, but the court would not keep  
12 the adversary proceeding on the active case docket while defendant makes payments  
13 under the settlement. While the court understands that Plaintiff does not want to dismiss  
14 the adversary proceeding without full payment of the settlement amount and Defendant  
15 does not want the entry of judgment while he is making payments of the settlement  
16 amount, the court does not want the adversary proceeding on its active case docket for  
17 another two years while defendant is making settlement payments to plaintiff until June  
18 2017. The proposed order reserving jurisdiction without dismissal is not in accordance  
19 with the court's instructions for disposition of the adversary proceeding stated at the  
20 status conference, and the court will only approve a Settlement in accordance with its  
21 prior instructions to dismiss the adversary proceeding by reason of settlement, but  
22 expressly retaining jurisdiction over enforcement of the settlement, which would not  
23 prejudice the rights of either party to seek enforcement by this court of a settlement  
24 reached in this adversary proceeding through the court's ancillary jurisdiction if the court  
25 expressly retains jurisdiction over the settlement and/or the terms of the settlement are  
26 incorporated into a final order of dismissal or judgment. See, e.g., 3 Wagstaffe, *California*  
27 *Practice Guide: Federal Civil Procedure Before Trial*, ¶¶ 15:141 -15:141.3 (2014), citing  
28

1 *inter alia*, *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 381  
2 (1994); *K.C. ex rel C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014).

3 Accordingly, the court rules on the so-called “Stipulation for Settlement” and the  
4 proposed “Order Reserving Jurisdiction” unilaterally submitted by Mr. Villalobos as  
5 follows:

- 6 1. The so-called “Stipulation for Settlement,” filed on August 21, 2015 is  
7 disapproved because it is only signed by Mr. Villalobos, counsel for Plaintiffs,  
8 and is thus not a proper stipulation of the parties, which would be signed by  
9 counsel for both sides.
- 10 2. As a tentative ruling, the court would be inclined to approve the settlement  
11 recited in the “Memorandum of Settlement” signed and dated by the parties  
12 and their counsel on July 24, 2015, which was attached to “Stipulation for  
13 Settlement” on condition that (1) the parties resubmit the Memorandum of  
14 Settlement with a proper Stipulation for Settlement signed by counsel for all  
15 parties; and (2) the parties submit a joint proposed order which approves the  
16 terms of the settlement, dismisses the adversary proceeding by reason of  
17 settlement and provides for the court expressly retaining jurisdiction over the  
18 terms of the settlement and/or incorporating the express terms of the  
19 settlement into the order for dismissal by reason of settlement. Moreover, the  
20 court indicates to the parties that (1) it will not approve any settlement which  
21 keeps this adversary proceeding on its active case docket for another 20  
22 months until June 2017 for Defendant to complete the payment plan under the  
23 settlement and that (2) upon any approval of a settlement, the court will require  
24 either the immediate entry of a judgment or a dismissal by reason of settlement  
25 with express retention of jurisdiction over the terms of the settlement if  
26 enforcement is needed. If the parties do not consent to immediate disposition  
27 of the adversary proceeding upon approval of the settlement, the court will not  
28

1 approve the settlement and will immediately set the matter for a pretrial  
2 conference and a trial.

- 3 3. The proposed "Order Reserving Jurisdiction over Settlement," lodged on  
4 August 21, 2015, which was also unilaterally submitted by Mr. Villalobos, is  
5 disapproved because it is not in accordance with the court's instructions at the  
6 status conference on August 18, 2015 regarding immediate disposition of the  
7 adversary proceeding.
- 8 4. The further status conference scheduled for October 20, 2015 at 1:30 p.m. will  
9 remain on calendar, and counsel for the parties will be required to attend in  
10 person to discuss the appropriate disposition of this matter if the settlement is  
11 not resubmitted in accordance with the conditions of the court as outlined in  
12 this order and to discuss scheduling of a pretrial conference and a trial if the  
13 settlement is not approved in accordance with the court's instructions.

14 IT IS SO ORDERED.

15 ###

16  
17  
18  
19  
20  
21  
22  
23 Date: September 3, 2015



24  
25 Robert Kwan  
United States Bankruptcy Judge  
26  
27  
28