



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

John Martin Kennedy,

Debtor.

Case No.: 2:20-bk-15954-NB

Chapter: 11

**MEMORANDUM DECISION RE:
DEBTOR'S MOTION TO ASSUME AND
ENFORCE MEDIATION TERM SHEET**

Hearing:

Date: September 15, 2020

Time: 1:00 p.m.

Place: [Telephonic]

In advance of the above-captioned hearing this Court issued its tentative ruling on Debtor's Motion for an Order: (1) Authorizing the Assumption of Mediation Term Sheet; and (2) Enforcing Compliance with Mediation Settlement (dkt. 67, the "Assumption Motion"). This written memorandum decision memorializes, expands upon, and adopts that tentative ruling as this Court's final ruling. Among other things, this decision addresses the arguments set forth on the record by creditor Yuneun Campos ("Ms. Campos") at the hearing and thereafter.

This memorandum decision *conditionally* grants the Assumption Motion in part, without any evidentiary hearing, for the following reasons: (i) This Bankruptcy Court has "arising under" jurisdiction. (ii) On the one hand, the mediation term sheet lacked

1 agreement on an essential term to make it noncontingent – the dollar amount and other
2 terms to be offered by Ms. Campos to settle with a third party, Bertram Fuller– and
3 Debtor has not established that this contingency can be eliminated by any judicial
4 determination of a dollar amount and other terms that Ms. Campos allegedly "should"
5 have offered to comport with the duty of good faith and fair dealing. (iii) On the other
6 hand, as of the date of the bankruptcy petition the conditional agreement embodied in
7 the mediation term sheet still existed; and if Ms. Campos is not required to pay anything
8 more than her highest offer to settle the Fuller matters then, to that extent, Debtor's
9 theory of good faith and fair dealing can apply, such that she could not deny that the
10 condition is satisfied. Accordingly, if Debtor is willing to absorb the cost of settling the
11 Fuller matters above what Ms. Campos previously agreed to pay, then the mediation
12 term sheet is enforceable and can be assumed under § 365¹ – otherwise not.

13 At the hearing, Debtor's counsel indicated that Debtor would absorb that excess
14 cost of settling the Fuller matters. Therefore, once Debtor has arranged for that
15 settlement with Fuller as further set forth below, the Assumption Motion will be granted.

16 **1. BACKGROUND²**

17 On March 19, 2019, Debtor filed a prior chapter 13 bankruptcy case (Case No.
18 2:19-bk-12964-NB, the "Prior Case"). On or about June 27, 2019, this Court ordered
19 Debtor and Ms. Campos to participate in mediation. Prior Case, dkt. 52. Mediation was
20 successful and resulted in a mediation term sheet. See redacted version, dkt. 67, Ex. 1.
21 On September 23, 2019, the Prior Case was dismissed. Prior Case, dkt. 58.

22 Notwithstanding the parties' apparent resolution of their disputes, at some time
23 following dismissal of the Prior Case, new disputes arose and litigation in State Court
24 continued. Dkt. 67, p. 7:7-14. On June 30, 2020, Debtor filed this chapter 11

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26 ¹ Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States
27 Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy
28 Procedure or other federal or local rule, and other terms have the meanings provided in the Code, Rules,
and the parties' filed papers.

² A more detailed recitation of the factual background is provided in the parties' papers and will not be
repeated here. Dkt. 67-70, 89, 105.

1 bankruptcy case, primarily for the purpose of assuming and enforcing the mediation
2 term sheet. *Id.*, p. 6:12-14.

3 The primary focus of the parties' arguments regarding assumption and
4 enforcement of the mediation term sheet is paragraph 10, which provides that "[t]he
5 settlement is contingent upon Campos' negotiating a settlement with Bertram Fuller."
6 Dkt. 67, Ex.1, at PDF p.37. Neither party disputes that Ms. Campos had not settled with
7 Mr. Fuller prior to the filing of this bankruptcy case. But Debtor states that he purchased
8 one of two judgments Mr. Fuller held against Ms. Campos and he has an option to
9 purchase the second judgment (together, the "Fuller Judgments" or "Fuller matters").
10 Dkt. 67, p.22:19-26.

11 **2. JURISDICTION AND AUTHORITY**

12 The parties dispute whether this Bankruptcy Court has jurisdiction. See 28
13 U.S.C. 1334. In addition, this Court has an independent duty to consider its own
14 jurisdiction, and the related issue of whether this Court has the authority to issue a final
15 order. *In re AWTR Liquidation Inc.*, 547 B.R. 831, 833 (2016).

16 Ms. Campos argues that this Court lacks jurisdiction under *Kokkonen v.*
17 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Ms. Campos cites a decision in
18 which a Bankruptcy Court held that, under *Kokkonen*, it lacked post-dismissal
19 jurisdiction over a settlement allegedly agreed to during the bankruptcy case. *In re*
20 *Hanks*, 182 B.R. 930 (Bankr. N.D. Ga. 1995).

21 Debtor advances two arguments in response. One is not persuasive, but the
22 other is.

23 One of Debtor's arguments is that *Kokkonen* includes an exception when the
24 federal court's dismissal order retains jurisdiction. It is true that this Bankruptcy Court's
25 dismissal order included language retaining jurisdiction. But this language would not be
26 broad enough to adjudicate a run-of-the-mill contract dispute (if that were all that is at
27 issue).

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1 The dismissal order provides that this Court "retains jurisdiction on all issues
2 involving sanctions [and other irrelevant grounds] ... and to any additional extent
3 provided by law." Dismissal Order (Ex.2 to Reply, dkt.105, at PDF pp.15-17) (emphasis
4 added). The problem for Debtor is that, under *Kokkonen*, the "additional extent
5 provided by law" does not include ordinary post-dismissal disputes over alleged
6 settlements.

7 Nevertheless, Debtor's alternative argument is correct: the mediation term sheet,
8 just like any other purported contract sought to be assumed, is subject to this
9 Bankruptcy Court's jurisdiction. See dkt.105, p.7:5-12. Any ability to assume the
10 contract arises under the Bankruptcy Code (11 U.S.C. 365), and an essential element of
11 assumption is the determination whether an assumable contract exists. In other words,
12 this is not just a run-of-the-mill contract dispute: it is part and parcel of issues that arise
13 under section 365.

14 Any contrary ruling would not make sense. Motions to assume executory
15 contracts and unexpired leases could not be litigated at all if Bankruptcy Courts lacked
16 jurisdiction to address the inevitable subsidiary issues: everything from whether a
17 contract was formed to whether it was terminated prepetition, who breached it, what
18 damages have been incurred, whether those damages amount to penalties that need
19 not be cured, etc., etc. See *generally AWTR*, 547 B.R. 831, 833-37 (discussing "arising
20 under" jurisdiction and authority, and Bankruptcy Courts' ability to determine issues
21 necessarily addressed in determining issues arising under the Bankruptcy Code).

22 For these reasons, this Bankruptcy Court has subject matter jurisdiction. For the
23 same reasons, this Bankruptcy Court has the authority to issue a final order on the
24 Assumption Motion.

25 **3. DISCUSSION**

26 **a. Legal Standards**

27 Section 365(a) permits a debtor to assume or reject any executory contract or
28 unexpired lease. Within the Ninth Circuit, the "Countryman" definition is generally

1 applied to determine whether, for purposes of § 365, a contract is executory. *In re*
2 *Hertz*, 536 B.R. 434, 439 (Bankr. C.D. Cal. 2015); citing *In re Pacific Express*, 780 F.2d
3 1482, 1487 (9th Cir. 1986)). Under that standard, a contract is executory if the
4 obligations of both parties to the contract “are so far underperformed that the failure of
5 either would constitute a material breach excusing the performance of the other.” *Id.*
6 (citing Countryman, Executory Contracts in Bankruptcy: Part I, 57 Minn. L. Rev. 439,
7 460 (1973), cited in *In re Alexander*, 670 F.2d 885, 887 (9th Cir. 1982)).

8 **b. The mediation term sheet is an executory contract, and if Debtor**
9 **satisfies or moots the contingency in paragraph 10 then the term sheet is**
10 **enforceable and assumable**

11 For the reasons stated below, this Court finds and concludes that the mediation
12 term sheet is an executory contract that is assumable *if* Debtor completes his
13 arrangements to settle the Fuller Judgments and agrees to limit his claim against Ms.
14 Campos arising from his interest in the Fuller Judgments.

15 **(i) The mediation term sheet is an executory contract**

16 The parties dispute whether the mediation term sheet is an executory contract.
17 In her opposition papers, Ms. Campos cites cases in which courts have held that the
18 pre-petition expiration or termination of a contract is fatal to a Debtor’s efforts to assume
19 that contract (dkt. 89, p.12:10-13:11) and she argues that under applicable California
20 law the mediation term sheet expired pre-petition because she was unable to resolve
21 the Fuller Judgments despite her best efforts. *Id.*, 13:12-14:18.

22 This Court is not persuaded. First, the relevant language in paragraph 10 that
23 Ms. Campos relies upon does not contain an expiration date for the contingency to be
24 satisfied. See Dkt. 67, Ex.1, at PDF p.37 (“[t]he settlement is contingent upon Campos’
25 negotiating a settlement with Bertram Fuller ...”). Second, Ms. Campos has not
26 presented evidence establishing that she took steps to terminate the agreement pre-
27 petition, or even notify Debtor of a breach that could be construed as having terminated
28 the agreement.

1 Ms. Campos also raised additional arguments and cited new legal authority at
2 the hearing, to which Debtor objected on the ground that they were not timely raised in
3 Ms. Campos' opposition papers. This Court agrees and, accordingly, sustains that
4 objection. Alternatively, even if this Court were to consider Ms. Campos' newly raised
5 arguments and authority, they are not persuasive.

6 First, Ms. Campos argues that the mediation term sheet is not an executory
7 contract, on the grounds that the obligations imposed by the mediation term sheet are
8 "conditions" not "duties," and that these labels supposedly are determinative, citing *In re*
9 *Columbia Gas System, Inc.*, 50 F.3d 233 (3d Cir. 1995). In fact, *Columbia Gas* cuts the
10 other way: it reinforces that the mediation term sheet is an executory contract.

11 In *Columbia Gas* the Court of Appeals for the Third Circuit affirmed the trial
12 court's ruling that any remaining acts to be performed under a prepetition settlement of
13 a class action lawsuit were not enough to make the settlement agreement "executory"
14 under § 365. The debtor in *Columbia Gas* had agreed to new gas prices, and all that
15 remained for the plaintiff class members to do was (i) the "administrative" act of
16 executing releases of claims that had "already been extinguished" by the court-
17 approved settlement and (ii) the "ministerial act" of executing a supplemental contract
18 that had no apparent purpose other than taking the terms of the global settlement and
19 "apply[ing] them specifically to each class member," without altering "the relationship
20 forged by the settlement agreement." *Columbia Gas*, 50 F.3d 233, 242-43 (footnotes
21 and citations omitted). That ministerial act was a "condition" for the plaintiffs to obtain
22 an additional benefit (sharing in escrowed funds that the debtor had failed to deposit),
23 but there was "no indication" that any failure to perform that ministerial act was intended
24 by the parties to "constitute a breach of the settlement agreement," let alone a breach
25 that would excuse the debtor from abiding by the new gas prices to which it had agreed
26 in the settlement. *Id.* at 243-44 (footnotes and citations omitted). In sum, the remaining
27 acts for the non-debtor parties to perform were not material breaches that would have
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1 excused the debtor in *Columbia Gas* from performing, so the Countryman test was not
2 satisfied.

3 In contrast, under the plain language of the mediation term sheet, Ms. Campos'
4 continued failure to satisfy the conditions of paragraph 10 clearly would excuse Debtor
5 from his obligations under the mediation term sheet, thereby satisfying the Countryman
6 test, and although the specific terms of any settlement with Mr. Fuller were not set forth,
7 at a minimum Ms. Campos had a duty to attempt such a settlement, under the duty of
8 good faith and fair dealing. Thus, *Columbia Gas* only reinforces this Court's conclusion
9 that the mediation term sheet is an executory contract.³

10 Next, Ms. Campos argues that allowing Debtor to assume and enforce the
11 mediation term sheet is akin to specific performance, and that specific performance
12 should not be an available remedy. In support of this argument, Ms. Campos relies on
13 *Bonk v. Boyajian*, 128 Cal.App.2d 153 (1954), which declined to mandate specific
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15 ³ As additional support for its adoption of the Countryman test, *Columbia Gas* noted the negative effects
16 of treating the settlement agreement as an assumable executory contract. If the debtor in that case had
17 to assume the contract then it would have been obligated to make an administrative priority "cure"
payment of 100% of the plaintiffs' claims, ahead of other creditors, without generating any benefit for the
bankruptcy estate.

18 Unlike that situation in *Columbia Gas*, the settlement between Ms. Campos and Debtor generates
19 a number of well-recognized benefits for Debtor's bankruptcy estate. See generally *In re A & C Prop's*,
784 F.2d 1377, 1381 (9th Cir. 1986). The settlement saves the bankruptcy estate "the expense,
20 inconvenience and delay necessarily attending" the parties' underlying litigation, which has been
21 protracted and complex. *A & C Prop's*, 784 F.2d 1377, 1381 (citation and internal quotation marks
omitted). That is a large benefit because the parties' attorney fees already dwarf the underlying
judgment. See Assumption Motion (dkt. 67) at PDF p. 7:7-14.

22 The settlement, as embodied in the mediation term sheet, also avoids having to litigate the
reasonableness of attorney fees, which is a notoriously difficult issue to address without getting into
attorney-client communications about strategies and tactics, all of which makes the "probability of success
23 in the [underlying] litigation" difficult to measure and risky. *A & C Prop's*, 784 F.2d 1377, 1381 (citation
and internal quotation marks omitted). The "paramount interest of the creditors" – none of whom except
24 Ms. Campos objected to the Assumption Motion – also favors enforcement of the settlement, because
otherwise Debtor's ongoing litigation with Ms. Campos jeopardizes his ability to pay other creditors in any
25 timely manner. *Id.* Finally, although the underlying litigation is against Debtor, and therefore there are no
"difficulties ... in the matter of collection" from Ms. Campos (*id.*), nevertheless there is an analogous
26 concern that Ms. Campos' unwillingness or inability to settle her own debt with Mr. Fuller could impede
her ability to agree to any resolution with Debtor, as has actually happened in this matter.

27 In sum, all of the bankruptcy policies outlined in *A & C Properties* favor a straightforward
application of the Countryman test for what is an executory contract. Under that test, the mediation term
sheet is executory because neither party's obligations are "ministerial" as in *Columbia Gas* – to the
28 contrary, Ms. Campos' ongoing failure to settle with Mr. Fuller would excuse Debtor from performance
(unless he moots that issue, as he proposes to do), so the Countryman test is satisfied.

1 performance of an option to purchase real property on the grounds that the option was
2 so incomplete, uncertain, and indefinite that the provision was rendered unenforceable.

3 Ms. Campos is mixing apples and oranges. Debtor seeks authority to assume
4 the mediation term sheet under the Bankruptcy Code, not enforce any remedy for a
5 breach under California law. When and if Ms. Campos refuses to perform her
6 obligations under the term sheet then the issue of remedies will be ripe, but until that
7 time any issue of damages or specific performance is premature.

8 Alternatively, even if this Court were ordering specific performance (which it is
9 not), *Bonk* actually supports granting specific performance. Unlike the situation in *Bonk*,
10 Ms. Campos has not pointed to anything that remains incomplete, uncertain, or
11 indefinite about her obligations under the mediation term sheet once the Fuller
12 Judgments are resolved. Therefore, under *Bonk* this Court can order specific
13 performance.

14 In sum, the mediation term sheet is an executory contract that remained in effect
15 as of the petition date with obligations remaining on both sides. True, as discussed
16 below, that contract is unenforceable as long as the contingency in paragraph 10
17 continues to apply; but once that contingency is removed then the contract becomes
18 enforceable, and then it would be proper for Debtor to assume that contract for the
19 benefit of all creditors and the bankruptcy estate.

20 **(ii) Unless and until Debtor has resolved the Fuller Judgments,**
21 **the mediation term sheet lacks agreement on an essential term so it is**
22 **unenforceable**

23 Debtor argues that the mediation term sheet contains all of the essential terms of
24 the parties' agreement, is signed by both parties, and was intended to be a binding
25 (albeit conditional) agreement. Dkt. 67, pp.14:12-17:9. Debtor has established *prima*
26 *facie* evidence of all of those things, but as long as the contingency exists the
27 agreement cannot be enforced.

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1 Paragraph 10 of the mediation term sheet (*id.*, Ex.1, at PDF p.37) states in
2 relevant part that "[t]he settlement is contingent upon Campos' negotiating a settlement
3 with Bertram Fuller" (Emphasis added). Ms. Campos argues that this is a condition
4 precedent that has not been satisfied, which renders the mediation term sheet
5 unenforceable. Dkt. 89, p.14:9-18. Debtor counters that, regardless whether paragraph
6 10 is a condition precedent or (as Debtor argues) a condition subsequent, Ms. Campos
7 failed to use good faith to fulfill the contingency. Dkt. 105, pp.2:6-6:16.

8 This Court is not entirely persuaded by either party. On the one hand, contrary to
9 Ms. Campos apparent position, the mediation term sheet only remains unenforceable
10 for as long as the condition of settling the Fuller Judgments is not satisfied or mooted.
11 On the other hand, contrary to Debtor's apparent position, unless and until that
12 condition is satisfied or mooted the mediation term sheet is not enforceable. To the
13 contrary, paragraph 10 appears to be an agreement to agree, which is generally
14 unenforceable. The fact that the issue reserved for future agreement was the terms of a
15 settlement with a third party (Mr. Fuller) only makes the agreement that much more
16 unenforceable (as long as that contingency remains unresolved).

17 Under Debtor's theory, he and Ms. Campos had an agreement that was
18 contingent on Ms. Campos' negotiation of a future agreement with a third party in an
19 unspecified dollar amount, to be paid over an unspecified period of time, with
20 unspecified other terms and conditions. Without having set forth in the mediation term
21 sheet the range of terms that Ms. Campos could agree to, Debtor now asks this
22 Bankruptcy Court to determine what range he and Ms. Campos allegedly would have
23 agreed to, had they finished negotiating every term of the mediation term sheet, under
24 the implied covenant of good faith and fair dealing.

25 This is the very definition of an agreement to agree. Such amorphous
26 agreements are unenforceable - at least, until the contingency is removed. *See, e.g.,*
27 *City of L.A. v. Superior Court of L.A. Cnty.*, 51 Cal.2d 423, 433 (1959) ("The general rule
28 is that if an 'essential element' of a promise is reserved for future agreement of both

1 parties, the promise gives rise to no legal obligation until such future agreement is
2 made") (citation omitted).

3 Alternatively, even if paragraph 10 of the mediation term sheet were not an
4 agreement to agree, the same principles should apply. Just as agreements to agree
5 are too amorphous to be enforceable, there is no yardstick by which this Bankruptcy
6 Court can determine whether Ms. Campos did or did not act in good faith by not offering
7 a higher dollar amount, or sooner payment, or other terms.

8 In sum, Debtor has not established that the mediation term sheet is enforceable,
9 as long as the contingency in paragraph 10 continues to exist. But that last clause is
10 important because Debtor apparently has settled part of the Fuller matters, and has an
11 option to settle the rest. Dkt. 67, p.22:19-26.

12 **(iii) If the contingency is removed then the mediation term sheet**
13 **becomes enforceable**

14 As of the date of the bankruptcy petition the conditional agreement embodied in
15 the mediation term sheet still existed. Therefore, unlike a situation in which a contract
16 has terminated prepetition, there is something to be assumed.

17 True, as Ms. Campos points out, neither Debtor nor she performed the other
18 terms of the mediation term sheet, such as Debtor's obligation to make monthly
19 payments. But that is the whole point of section 365: debtors in bankruptcy can cure
20 defaults (even many defaults that could not be cured outside of bankruptcy).

21 As noted above, "[t]he general rule is that if an 'essential element' of a promise is
22 reserved for future agreement of both parties, the promise gives rise to no legal
23 obligation until such future agreement is made." *City of L.A.*, 51 Cal.2d 423, 433
24 (emphasis added). Therefore, for example, if Ms. Campos were to have reached a
25 settlement of the Fuller matters then, at that moment, the mediation term sheet would
26 have become enforceable.

27 But the equivalent of that outcome can still happen. Consider what would
28 happen if Debtor had simply settled the Fuller matters (rather than purchasing the

1 judgments/claims). In that event, the contingency would have become moot, thereby
2 eliminating Ms. Campos' objection to the enforceability of the mediation term sheet.

3 But Debtor need not go that far. There is evidence that Ms. Campos offered
4 \$60,000 to settle the Fuller matters. See dkt. 89, p.8. That changes the amorphous
5 state of affairs that existed when the parties signed the mediation term sheet. Any
6 refusal by Ms. Campos now to apply that same \$60,000 that she offered before to settle
7 the Fuller matters would be a violation of the covenant of good faith and fair dealing.

8 In other words, how could Ms. Campos argue that the mediation term sheet has
9 a fatal ambiguity that makes it unenforceable, when her financial obligation under
10 paragraph 10 of that agreement is no more than what she offered before? Ms. Campos
11 has failed to offer any explanation, except that she wishes to renege on her settlement
12 with Debtor.

13 Therefore, if Debtor is willing to absorb the cost of settling the Fuller matters
14 above the \$60,000 that Ms. Campos previously agreed to pay, then Ms. Campos has
15 not adequately rebutted Debtor's arguments in favor of granting the Assumption Motion.
16 But, if Debtor is unwilling to absorb that cost, then the parties are left with an agreement
17 to agree, which is unenforceable.

18 **(iv) It is unnecessary and improper for this Court to determine**
19 **whether Ms. Campos acted in good faith**

20 The parties devote considerable time and effort to addressing whether or not Ms.
21 Campos attempted to settle in good faith. This is not a justiciable question.

22 Debtor has not cited any legal authority that this Bankruptcy Court can and
23 should determine whether a party to a settlement agreement, which is itself conditioned
24 on settling with a third party, acted in good faith in deciding how many dollars to offer
25 that third party and any other settlement terms. Nor is this Bankruptcy Court aware of
26 such authority.

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1 There is no precedent of which this Bankruptcy Court is aware for holding a trial
2 to assess Ms. Campos' "good faith" in exploring settlement of the Fuller matters.
3 Moreover, as a practical matter, doing so would be highly impractical.

4 Presumably this Court not only would have to take evidence regarding the
5 underlying merits of Ms. Campos' disputes with Bertram Fuller, but also would have to
6 take evidence on the "meta-issue" of whether, based on Ms. Campos' subjective beliefs
7 as to those merits, she did or did not make or receive settlement offers in "good faith."
8 More precisely, this Court would have to determine whether an offer of \$X over Y
9 months with Z contingencies was too little, but \$XX over YY months with ZZ
10 contingencies would be enough to constitute "good faith." The process just described
11 would include layers of expensive litigation and uncertainty.

12 Such litigation over Ms. Campos' good faith is not legally warranted, not practical,
13 and not necessary. Rather, applying California precedent cited above regarding
14 agreements to agree, Debtor can either hold Ms. Campos to her highest and best offer
15 and thereby remove the contingency in paragraph 10, or Debtor can elect not to do so.
16 In the latter event, the parties will be left with an unenforceable agreement (and they
17 can continue litigating as before, or Debtor can explore other options).

18 **(v) Ms. Campos' unauthorized supplemental declaration is neither**
19 **properly considered nor, were it to be considered, persuasive**

20 This Court will grant Debtor's motion (dkt. 120) to strike Ms. Campos'
21 unauthorized supplemental declaration. Dkt. 115. Alternatively, this Court will sustain all
22 of Debtor's evidentiary objections to that declaration (except for the repeated references
23 to "video" links for paragraphs other than paragraph 16 of that declaration, which
24 appear to be typographical errors).

25 Alternatively, even if this Court were to accept in evidence Ms. Campos'
26 declaration, her assertions are irrelevant. This Court has carefully reviewed that
27 declaration (except the video link because of computer security concerns about such
28 links). This Court does not in any way minimize (i) the trauma that Ms. Campos asserts,

1 (ii) the jury's verdict, (iii) her (very substantial) attorney fees, or (iv) Debtor's lengthy
2 battles with her, including in his prior bankruptcy case before this Court. Nor does this
3 Court minimize Ms. Campos' apparent confusion about what legal issues are at stake –
4 bankruptcy changes the usual dynamics in ways that can be confusing. But those
5 things are not properly at issue in considering whether to grant the Assumption Motion.

6 Rather, the issue is that Ms. Campos executed a settlement contract – the
7 mediation term sheet – and now for whatever reasons she seeks to renege on her
8 duties under that contract. Ms. Campos declares that she does not understand this
9 Court's interpretation of her duty of good faith and fair dealing. Dkt.115, para.21, at
10 p.5:6-8. As this Court has attempted to explain, the duty of good faith and fair dealing
11 required that she attempt to settle the Fuller Judgments, and although initially the
12 mediation term sheet was unenforceable because it does not specify on what terms she
13 was obligated to settle with Mr. Fuller, Debtor has now arranged to satisfy or moot that
14 condition. Specifically, Debtor has arranged to settle the Fuller Judgments at no greater
15 cost to Ms. Campos than she was already willing to pay. That takes away the only
16 uncertainty pointed to by Ms. Campos in her agreement with Debtor, so she has failed
17 to establish any reason why that agreement is unenforceable. *City of L.A.*, 51 Cal.2d
18 423, 433.

19 The record before this Court also establishes that the mediation term sheet is
20 beneficial to Debtor's other creditors and the bankruptcy estate. Therefore, the proper
21 course is for this Court to grant the Assumption Motion.

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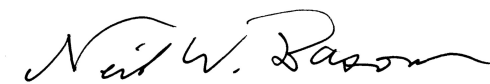
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1 **4. CONCLUSION**

2 For the reasons stated above, this Court finds and concludes that the mediation
3 term sheet is an executory contract, and although it is an unenforceable contract as
4 long as there is no settlement of the Fuller matters, it will become enforceable and can
5 be assumed under § 365 once Debtor has finalized the arrangements to resolve those
6 matters. Debtor is directed to lodge a proposed order implementing the foregoing
7 Memorandum Decision within 7 days of the date of this Order.

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24 Date: September 29, 2020



Neil W. Bason
United States Bankruptcy Judge