

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICHARD C. HENNING,

CASE NO. 5:13-cv-00443 EJD

Plaintiff(s),

**ORDER GRANTING PLAINTIFF'S
MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

v.

DOMINIC CHIRCO, et. al.,

[Docket Item No. 21]

Defendant(s).

Presently before the court in this action under the Americans With Disabilities Act, 42 U.S.C. § 12101 et. seq., is Plaintiff Richard C. Henning's ("Plaintiff") Motion to Enforce a Settlement Agreement. See Docket Item No. 21. Plaintiff contends the parties settled this action at a court-sponsored mediation on November 18, 2013, and contemporaneously executed a term sheet that would later be expanded into a settlement agreement. Plaintiff's counsel drafted the agreement, revised it at Defendants' direction, obtained Plaintiff's signature on the document and forwarded it Defendant's counsel. Defendant, ultimately, did not sign the document. Instead, Plaintiff's counsel was contacted by an attorney on Defendant's behalf to renegotiate the amount due. This motion was filed shortly thereafter.

Federal jurisdiction arises pursuant to 28 U.S.C. § 1331. Defendant did not file written opposition to the motion, and the time for filing an opposition has passed. See Civ. L.R. 7-3(a).

1 Having carefully reviewed Plaintiff's motion in conjunction with the settlement documents,¹ and
2 considering the absence of opposition, the court finds as follows:

3 1. The term sheet executed subsequent to the mediation on November 18, 2013, is a
4 complete agreement and no material facts remain in dispute. See Maynard v. City of
5 San Jose, 37 F.3d 1396, 1401 (9th Cir. 1994). Both parties have agreed to the terms
6 of the settlement as evidenced by the signatures on the settlement documents. See
7 Harrop v. Western Airlines, Inc., 550 F.2d 1143, 1144-45 (9th Cir. 1977).

8 2. As to the settlement agreement drafted by Plaintiff's counsel, its terms are consistent
9 with that of the term sheet, and it may be enforced even without Defendant's
10 signature on the document. See Doi v. Halekulani Corp., 276 F.3d 1131, 1139-40
11 (9th Cir. 2002).

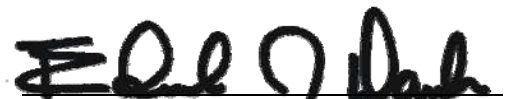
12 Accordingly, Plaintiff's Motion to Enforce the Settlement Agreement is GRANTED.

13 In order to ensure compliance with the terms of the settlement, the parties are ordered to
14 appear on **July 18, 2014, at 10:00 a.m.** to show cause why the case should not be dismissed as
15 contemplated by the settlement agreement. On or before **July 11, 2014**, the parties shall file a joint
16 statement in response to this Order to Show Cause setting forth the status of payment due under the
17 settlement agreement and indicating when this case can be dismissed. If payment according to the
18 settlement agreement is not made before July 18, 2014, Defendant should also be prepared to show
19 cause why the court should not impose any and all appropriate sanctions, including monetary
20 sanctions, for failure to comply.

21 The Order to Show Cause shall be automatically vacated and the parties relieved of the
22 obligation to file a joint statement if a stipulated dismissal is filed on or before **July 11, 2014**.

23 **IT IS SO ORDERED.**

24 Dated: May 21, 2014


EDWARD J. DAVILA
United States District Judge

25
26
27
28 ¹ Plaintiff's motion to file the settlement documents under seal (Docket Item No. 26) is
GRANTED.