

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No.
)
) Chapter
 Debtor.)
)
 _____) Adversary Proceeding
) No.
 Plaintiff,)
)
 v.)
)
)
 Defendant.)
 _____)

SCHEDULING ORDER FOR:

- TRIAL IN ADVERSARY PROCEEDING
- FINAL HEARING ON MOTION FOR RELIEF FROM STAY
- TRIAL ON OBJECTIONS TO CLAIM
- HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER __ PLAN
- OTHER:

- A Status Conference in this adversary proceeding
- A preliminary hearing on this motion for relief from stay
- A hearing regarding objections to claim
- A prehearing conference regarding objections to confirmation of plan

1 **be prepared to adjust their schedules accordingly.**

2 **MOTIONS.** Unless otherwise ordered, (a) motions to join other
3 parties and to amend the pleadings must be filed not later than **30**
4 days after entry of this scheduling order and (b) motions for
5 summary judgment must be heard no later than **30** calendar days
6 before the Date and Time of Trial.

7 **DISCOVERY.** Discovery shall be completed by the Discovery
8 Deadline shown below. Completion means that depositions must be
9 concluded, although not necessarily transcribed. As to written
10 and production discovery, responses must be due before the
11 Discovery Deadline. The court will attempt to resolve all
12 discovery disputes on an expedited basis via telephonic
13 conference, which any party may initiate by request to the court's
14 Calendar Clerk/Courtroom Deputy (Ms. Lorena
15 Parada, Courtroom Deputy/Calendar Clerk, at 415-268-2323 or
16 Lorena_Parada@canb.uscourts.gov) and notice to the other party
17 after they have met and conferred and made a good faith effort to
18 resolve the dispute. The party requesting the conference should
19 submit a brief letter or e-mail to Ms. Parada explaining the
20 issues to be presented; the other party may submit a brief letter
21 or e-mail in the same manner.

22 The Discovery Deadline may be extended by the parties by
23 agreement, without an order of the court.

24 **EVIDENCE.** On motions for relief from stay, testimonial
25 evidence at the Trial must be presented by written declaration(s)
26 or deposition excerpt(s), unless the court by order allows oral

1 testimony. B.L.R. 4001-1(e). Any motion for permission to
2 introduce any oral testimony (including by cross-examination of
3 the other party's declarant(s) or deponent(s)) shall be filed and
4 served (with chambers copies provided) no later than **14** calendar
5 days before the Date and Time of Trial and shall include the names
6 of the witnesses, the subject of their expected testimony, and,
7 where applicable, a statement of the reasons why the testimony
8 cannot properly be introduced by declaration(s) or deposition
9 excerpt(s). Any opposition shall be filed and served (with
10 chambers copies provided) no later than **10** calendar days before
11 the Date and Time of Trial. The court will rule on the motion
12 without a hearing. No such motion is required for cross-
13 examination or redirect examination of expert witnesses.

14 On matters other than motions for relief from stay,
15 declarations of non-expert witnesses will not be considered except
16 by stipulation of the parties or prior court approval.

17 **PRE-TRIAL SUBMISSIONS.** Not later than **7** calendar days before
18 the Date and Time of Trial, each party shall:

19 (a) File, serve and provide chambers copies of a trial
20 brief, which shall include a summary of the facts to be proven and
21 the legal theories on which the party relies. Briefs shall not
22 exceed **15** pages without prior permission of the court. The court
23 will not normally request or permit post-trial briefs.

24 (b) On matters other than motions for relief from stay,
25 file and serve (but do not provide chambers copies) a witness
26 list, including a brief summary of the anticipated testimony from

1 each witness. If a party to the matter will be called as a
2 witness (even as an adverse witness) that party's name must be
3 included on the witness list. The presence of a witness' name on
4 the witness list is to alert the court and the other side that the
5 witness may be called. It does not mean that that person will be
6 called. Accordingly, each party is responsible for ensuring the
7 attendance of every witness the party intends to call, whether or
8 not named by the other side. Except in exceptional circumstances,
9 absent consent by the other side, a party will not be allowed to
10 call a witness not named on that party's witness list. This
11 subparagraph shall not apply to expert witnesses or their
12 testimony.

13 (c) On motions for relief from stay, file, serve and
14 provide chambers copies of (i) a notice identifying any
15 declaration(s), deposition excerpt(s) or memoranda previously
16 filed in connection with the preliminary hearing and (ii) any
17 additional declarations the party wishes the court to consider.

18 (d) File and serve (but do not provide chambers copies)
19 a list of exhibits (other than those to be used for impeachment or
20 rebuttal) and exchange, but not file, copies of all exhibits the
21 party intends to introduce into evidence. Any paper(s) in the
22 court's file of which a party intends the court to take judicial
23 notice, or other facts that are proper for judicial notice under
24 Fed. R. Evid. 201, must be reproduced and included as an
25 exhibit(s). Copies of the declarations filed and served in
26 accordance with this order shall be marked as exhibits in the

1 manner described herein. All exhibits are to be premarked for
2 identification.

3 In adversary proceedings, Plaintiff's exhibits should be
4 marked by number and defendant's exhibits should be marked by
5 letter. On motions for relief from stay and other contested
6 matters initiated by motion, Moving Party's exhibits should be
7 marked by number and Respondent's, Debtor's or Trustee's exhibits
8 should be marked by letter. On objections to claim(s) and
9 objections to confirmation of plans, Creditor's exhibits should be
10 marked by number and Debtor's or Trustee's exhibits should be
11 marked by letter.

12 Each page of any exhibit that has more than one page is
13 to be numbered consecutively. The parties shall bring to Trial
14 copies of all exhibits for opposing counsel, the witnesses and the
15 court, together with an exhibit list. If a party has more than 10
16 exhibits, the exhibits should be placed in a three-ring binder
17 with a tab for each exhibit and the exhibit list placed at the
18 front of the binder.

19 If a party will have more than 2 exhibit binders for that
20 party's case in chief, counsel should request a pre-trial status
21 conference to discuss submission of exhibits in electronic form.

22 **EXPERTS.** The presentation of expert testimony at Trial
23 shall be governed by the following:

24 (a) Direct evidence shall be presented by a declaration
25 that authenticates the report of the expert. See FRCP
26 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each party

1 shall file and serve declarations of experts and other documentary
2 evidence related thereto no later than **30** calendar days prior to
3 the Discovery Deadline; provided, however, on motions for relief
4 from stay, such declarations shall be filed and served no later
5 than **14** calendar days prior to the Date and Time of Trial.

6 (b) To cross-examine an opposing party's expert
7 declarant, a party shall notify the opposing party in writing or
8 by e-mail at least **3 court** days before the Date and Time of Trial,
9 in which case the declarant will be required to attend the Trial.
10 Any party who fails to notify the opposing party will not be
11 permitted to cross-examine the opposing party's expert. Any party
12 who requests the right to cross-examine an expert and then does
13 not do so will be expected to reimburse the opposing party no less
14 than the expenses incurred in producing the expert at the Trial.

15 If either party anticipates the use of rebuttal expert
16 testimony, counsel should meet and confer regarding the timing of
17 disclosure of such expert, the submission of the expert's report
18 and discovery regarding such expert. If the parties do not reach
19 agreement, the matter should be brought before the court in the
20 same manner as discovery disputes as provided in this order.

21 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
22 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must advise
23 the opposing party of any objections to the introduction of
24 testimony or exhibits. Parties must meet and confer before Trial
25 to attempt to reach agreement regarding admissibility. The court
26 expects the parties to make good faith efforts to resolve all

1 evidentiary issues.

2 **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding
3 the introduction of testimony or exhibits are unsuccessful,
4 motions in limine should be filed and served no later than **4 court**
5 days before the Date and Time of Trial. Such motions should
6 include a certification that the moving party has complied in good
7 faith with the meet and confer requirements of the preceding
8 paragraph. Opposition should be filed and served no later than **1**
9 **court** day before the Date and Time of Trial.

10 Copies of motions and oppositions should be delivered
11 directly to Chambers. Motions in limine will be heard at the
12 commencement of Trial.

13 Notwithstanding the foregoing, if a party intends by a motion
14 in limine to exclude an expert or the expert's report, that party
15 should set the motion on the court's regular law and motion
16 calendar, to be heard at least **7** calendar days before the Date and
17 Time of Trial.

18 **STIPULATIONS.** At the commencement of Trial, the parties must
19 be prepared to stipulate into evidence all exhibits that are
20 admissible for at least one purpose. Bona-fide objections may be
21 reserved, with the issue of admissibility deferred until the
22 exhibit is offered into evidence.

23 **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed by
24 the parties or ordered by the court, Plaintiffs in adversary
25 proceedings, moving parties on motions for relief from stay, and
26 claimants on objections to claims will present their cases-in-

1 chief first. On objections to confirmation of plans, debtors or
2 other plan proponents will present their cases-in-chief first.

3 **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of
4 advance identification of witnesses and production of exhibits
5 does not apply to witnesses and exhibits presented for purposes of
6 impeachment or rebuttal.¹ This paragraph supercedes the expert
7 disclosure procedure of FRCP 26(a)(2)(D)(ii), incorporated via
8 Fed. R. Bankr. P. 7026.

9 **DEMONSTRATIVE EVIDENCE.** The court does not want charts,
10 power point presentations, whiteboards, or similar large display
11 items to be used during trial. Parties desiring to summarize,
12 reproduce or display evidence should use normal 8-1/2" x 11"
13 sheets of paper to be provided to the court, witnesses and
14 opposing counsel. Any exceptions to this policy should be
15 requested well in advance of trial.

16 **NOTICE TO COURT.** No later than the Monday of the week prior
17 to the Date and Time of Trial, counsel for: Plaintiff (in an
18 adversary proceeding); Moving Party (on a motion for relief from
19 stay); and the Debtor or Trustee (on objections to claim or
20 objection to plan confirmation) **must** telephone or e-mail the
21 court's Calendar Clerk/Courtroom Deputy, Ms. Lorena Parada (415-

22 _____
23 ¹ The proper function of rebuttal evidence is to contradict,
24 impeach or defuse the impact of the evidence offered by an adverse
25 party. Testimony offered only as additional support to an argument
26 made in a case in chief is improper on rebuttal. Peals v Terre
Haute Police Dept., 535 F.3d 621, 630 (7th Cir. 2008); see also Daly
v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238 (W.D. Wash.
2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

1 268-2323; Lorena_Parada@canb.uscourts.gov) and report: whether the
2 parties intend to go forward with the Trial as scheduled; if
3 settlement is likely; whether the time reserved for the Trial is
4 realistic; and any other relevant information.

5 **NON-COMPLIANCE.** Any failure of a party to comply timely with
6 this scheduling order may result in judgment against such party,
7 removal of the Trial from calendar, exclusion of evidence or
8 imposition of monetary or non-monetary sanctions. See FRCP
9 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATE AND TIME OF TRIAL:

TIME RESERVED FOR TRIAL:

DISCOVERY DEADLINE:

OTHER PROVISIONS:

END OF ORDER