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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	Case No.
,	Chapter
Debtor(s).	
,	Adv. Proc. No.
Plaintiff(s),	
v.	
,	
Defendant(s).	

TRIAL SCHEDULING ORDER

Fed. R. Bankr. P. 7016

On [], the court held a status conference in the above-entitled matter. Appearances were as noted on the record.

Parties who are acting as their own lawyers (e.g., unrepresented parties) are bound by the terms of this order just as lawyers would be, and they will be treated as “counsel” below.

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Upon due consideration, the court hereby establishes the following schedule:

Table of Pre-Trial and Trial Deadlines	
Fact Discovery Cut Off	[45–60 days before trial]
Expert Witness(es) Disclosure Date	[30–45 days before trial]
Expert Witness(es) Discovery Cut Off	[30 days before trial]
Last day to hear Discovery Motion(s)	[same day as discovery cut off]
Last day to hear Summary Judgment Motion(s)	[30 days before trial date]
Parties’ Pre-Trial Meet and Confer By	[7 days before pre-trial conf stmt due date]
Exchange Witness List and Exhibits By	[same as above]
Joint Pre-Trial Conference Statement	[7 days before pre-trial conference]
Filing Date	
Pre-Trial Conference Date & Time	[from Anna Lee]
Lodge Exhibits with Court	[7 days before trial]
Lodge Witness List with Court	[7 days before trial]
File and Serve Trial Brief	[7 days before trial]
Trial Date & Time	[set by SLJ]
Amount of Trial Time (Trials are Timed)	[half day (3 hrs); one day (6 hrs) etc.]

1. DISCOVERY

Counsel shall comply with the deadlines established above, as applicable. Notwithstanding Civil Local Rule (C.L.R.) 37-3, as incorporated by Bankruptcy Local Rule (B.L.R.) 1001-2, all discovery motions must be heard by the close of discovery. Counsel should carefully review C.L.R. 37–1, which requires a meaningful “meet and confer” before asking for court assistance. Generally, discovery disputes can be resolved without the necessity of a formal motion. See Judge Johnson’s Practices and Procedures.¹ Counsel should be familiar with the filing and timing requirements for motions under B.L.R. 7007-1.

¹ <http://www.canb.uscourts.gov/procedure/johnson/judge-johnsons-practices-and-procedures>

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2 **2. MOTIONS FOR SUMMARY JUDGMENT**

3 Counsel should be familiar with the filing and timing requirements for motions under
4 B.L.R. 7007-1. No separate statement of undisputed facts is required under the Federal Rules
5 or B.L.R.

6 **3. PARTIES' PRE-TRIAL MEET AND CONFER**

7 Counsel shall meet and confer (in person or by telephone, and not solely by e-mail) to
8 discuss the conduct of the trial in this matter by the deadline established above. At the
9 conclusion of their meeting, counsel shall prepare a Joint Pre-Trial Conference Statement
10 which includes concise and specific responses to each of the following matters:

- 11 A. The following facts are admitted and require no proof
- 12 B. The following issues of fact, and no others, remain to be litigated
- 13 C. The following issues of law, and no others, remain to be litigated
- 14 D. The appropriate measure of damages is
- 15 E. The parties have exchanged lists of witnesses to be called at trial
- 16 F. The parties have exchanged all other non-testimonial evidence to be
used at trial including: documents, expert reports, physical evidence
- 17 G. The parties have stipulated to the admission of the following documents
for all purposes
- 18 H. The parties have objections to the following documents (including the
general nature of the objection)
- 19 I. Other matters that might affect the trial: (Set forth additional matters
20 such as anticipated motions in limine, special scheduling of witnesses,
21 objections to proposed testimony, etc.)
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24 If the parties do not agree on a joint response to any of the above, they should set forth
25 each side's position clearly and concisely.
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1 Counsel need not disclose evidence that will be presented as impeachment of any
2 witness. Counsel should be clear that impeachment is a fairly narrow category of evidence.²

3 **4. JOINT PRE-TRIAL CONFERENCE STATEMENT**

4 Counsel shall file a Joint Pre-Trial Conference Statement by the deadline set forth
5 above. The statement shall include the following elements:

- 6 A. Responses to all matters addressed in Paragraph 3, above;
- 7 B. Each part(ies)' List of Exhibits to be Offered at Trial; and
- 8 C. Each part(ies)' List of Witnesses to be Offered at Trial.

9 Witnesses and exhibits omitted from these lists will be excluded.

10 The operative pleadings (complaint and answer) will be deemed superseded by the
11 parties' Pre-Trial Conference Statement.

12 **5. COURT'S EXPECTATIONS REGARDING PARTIES' PRE-TRIAL MEET
13 AND CONFER AND PRE-TRIAL CONFERENCE STATEMENT**

14 It is the Court's experience that proper preparation for trial, including appropriate
15 participation in the pre-trial process, makes for better trials and better results. Counsel must
16 participate meaningfully in the Parties' Pre-Trial Meet and Confer.

17 Plaintiff(s)' counsel shall have the obligation of setting up the Parties' Pre-Trial Meet
18 and Confer and drafting the initial Joint Pre-Trial Conference Statement. Defendant(s)'
19 counsel shall be available for the Parties' Pre-Trial Meet and Confer, and shall review the
20 Joint Pre-Trial Conference Statement promptly and shall supply comments as necessary.
21 Plaintiff(s)' counsel shall file the completed document on time and in a satisfactory state.

22 If counsel fail to cooperate with each other in conducting the Parties' Pre-Trial Meet
23 and Confer, or in preparing the Pre-Trial Conference Statement, they and the parties should
24 expect the court will assess sanctions set out below based on fault.

25 **6. PRETRIAL CONFERENCE**

26 _____
27 ² The proper function of rebuttal evidence is to contradict, impeach or defuse the impact of
28 the evidence offered by an adverse party. Testimony offered only as additional support to an
argument 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 A Pretrial Conference will be held at the date and time indicated above at the United
2 States Bankruptcy Court, 280 South First Street, Courtroom 10, San Jose, CA 95113.

3 Trial counsel shall attend in person.

4 The court will discuss in detail the matters set forth in the Joint Pre-Trial Conference
5 Statement. The court will focus in particular on the order of proof, matters of fact and law
6 over which there is no argument, and stipulations as to witness and exhibit admissibility.

7 **7. TRIAL EXHIBITS**

8 a. Procedure

9 By the deadline set forth above, counsel for each party shall submit 2 copies of all
10 exhibits identified in the Exhibit List (See § 4) to the court. Counsel shall premark all
11 exhibits (Plaintiff(s) should use numbers, Defendant(s) letters). Counsel shall bring
12 sufficient copies of exhibits for all counsel and any witness as the court does not have the
13 ability to reproduce exhibits during trial. If a party has more than 10 exhibits or the exhibits
14 are voluminous, they should be put in a binder with appropriate tabs and page numbers.
15 Counsel are encouraged to discuss specific issues involving documentary evidence with the
16 courtroom deputy.

17 b. Introduction

18 Generally, exhibits will only be admitted at trial if they are sponsored by a witness and
19 their relevance is demonstrated to the court.

20 **8. TRIAL BRIEFS**

21 By the date set forth above each counsel shall file and serve a trial brief. Trial briefs
22 shall not exceed fifteen (15) pages without prior permission of the court. Trial briefs must
23 include:

24 A. A discussion of the elements of each cause of action, including citation to
controlling authority (9th Circuit); and

25 B. A discussion of the legal basis and calculation for each type of damage
26 requested in the complaint.

27 Extended factual discussions are not necessary.

28 **9. TRIAL DATE**

1 Trial will commence at the date and time noted above, at the United States
2 Bankruptcy Court, 280 South First Street, Courtroom 10, San Jose, CA 95113.

3 Seven calendar days before the trial date counsel shall inform the courtroom deputy
4 (Anna Lee (408) 278-7517) whether the parties have settled. The court will not vacate trial
5 date unless settlement is reduced to writing and signed by the parties prior to trial.

6 **10. TIMED TRIAL**

7 All trials are timed. Each day of trial is approximately six (6) hours, and the timer will
8 commence at the time court is called to session. The timer will only pause for the morning
9 recess, lunch, and afternoon recess.

10 **11. WITNESSES**

11 Unavailability

12 Counsel must take appropriate steps to ensure witnesses are available for trial. If
13 necessary, witnesses must be subpoenaed. Unrepresented parties must obtain subpoenas in
14 advance from the clerk of the court and ensure they are served on witnesses in a timely way.

15 The use of prior depositions or declarations is not permitted unless the witness is
16 truly unavailable. Counsel should review Federal Rule of Evidence 804(a) for what
17 constitutes “unavailable”.

18 Form of Testimony

19 _____ Direct witness testimony in the form of a declaration under penalty of perjury
20 will be submitted at the same time as the trial brief. Witnesses must be
21 present in court at trial for examination; or

22 _____ Testimony will be presented live for all witnesses.

23 Interpreters

24 If counsel intends to call a witness who speaks only or primarily a language other
25 than English, counsel is responsible for providing interpreter services for trial, except when
26 the adversary proceeding is instituted by an agency or department of the United States. *See*
27 28 U.S.C. 1827. The interpreter must be a Federally-Certified Court Interpreter, a
28

1 Professionally-Qualified Interpreter, or a Language-Skilled Interpreter, as defined by the
2 Clerk of the United States District Court, Northern District of California.³

3 **11. FAILURE TO COMPLY WITH OBLIGATIONS UNDER THIS PRE-**
4 **TRIAL ORDER**

5 The court takes trial seriously and expects counsel to do the same.

6 Continuances:

7 Counsel should be aware that the court will not grant continuances of trial dates
8 absent compelling circumstances beyond the part(ies)' or counsel's control. The
9 unavailability of parties, counsel, experts, or other necessary individuals will not constitute
10 cause to continue a trial.

11 Stipulations to continue a trial do not bind the court.

12 Failure to comply with pre-trial requirements – including failing to file exhibits,
13 witness lists, and trial briefs – will not result in a trial being reset but will result in appropriate
14 sanctions, as below.

15 Failure to Participate In Pre-Trial Process, to Complete Required Filings, or to
16 Appear for Trial:

17 Depending on fault and circumstances, the court may (1) enter judgment against the
18 offending party; (2) exclude evidence, (3) impose sanctions against a party, (4) impose
19 sanctions against counsel, (5) dismiss a matter or proceeding, or (6) enter any other order or
20 sanction permitted by law.

21 IT IS SO ORDERED.

22 ****END OF ORDER****

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³ See <https://www.cand.uscourts.gov/interpreters>

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