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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
SAI SOLEDAD ENERGY, INC.,
Debtor.

Case No. 95-57698-JRG
Chapter 7

**MEMORANDUM DECISION ON AXEL
JOHNSON'S MOTION TO EXCLUDE
PAROL EVIDENCE**

I. INTRODUCTION

Before the court is Axel Johnson's Motion to Exclude Parol Evidence offered by the debtor SAI Soledad Energy, Inc. The offered evidence that is the subject of the motion includes: the Declarations of John Flegel, Robert Membreno, Barry Flynn and Archibald Mull, as well as Exhibits "F" through "O" that were submitted in connection with the declarations. For the reasons hereafter set forth, the motion will be granted in part and denied in part.

II. CALIFORNIA'S PAROL EVIDENCE RULE

Before reaching the substance of the motion, the court must review the legal standard for allowing the introduction of parol evidence. California's parol evidence rule is set forth in

1 California Code of Civil Procedure § 1856.¹ It provides that
2 where the parties have set forth the terms of their agreement in
3 a writing which they intend as a final expression of their
4 agreement, the terms may not be contradicted by evidence of any
5 prior agreement or of a contemporaneous oral agreement. [§
6 1856(a).] The court must determine whether the writing was
7 intended by the parties as a final expression of their agreement
8 with respect to the terms included in the writing, and whether
9 the writing is intended as a complete and exclusive statement of
10 the terms of the agreement. [§ 1856(d).]

11 Section 1856 does not make inadmissible extrinsic evidence,

12
13 ¹ All statutory references are to the California Code of Civil Procedure unless otherwise indicated.

14 Section 1856 provides:

15 (a) Terms set forth in a writing intended by the parties as a final expression of their agreement with
16 respect to such terms as are included therein may not be contradicted by evidence of any prior
17 agreement or of a contemporaneous oral agreement.

18 (b) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by
19 evidence of consistent additional terms unless the writing is intended also as a complete and exclusive
20 statement of the terms of the agreement.

21 (c) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by
22 course of dealing or usage of trade or by course of performance.

23 (d) The court shall determine whether the writing is intended by the parties as a final expression of
24 their agreement with respect to such terms as are included therein and whether the writing is intended
25 also as a complete and exclusive statement of the terms of the agreement.

26 (e) Where a mistake or imperfection of the writing is put in issue by the pleadings, this section does
27 not exclude evidence relevant to that issue.

28 (f) Where the validity of the agreement is the fact in dispute, this section does not exclude evidence
relevant to that issue.

(g) This section does not exclude other evidence of the circumstances under which the agreement was
made or to which it relates, as defined in Section 1860, or to explain an extrinsic ambiguity or otherwise
interpret the terms of the agreement, or to establish illegality or fraud.

(h) As used in this section, the term agreement includes deeds and wills, as well as contracts between
parties.

1 other than that made inadmissible by subdivisions (a) and (b),
2 which is offered to interpret or explain the meaning of the
3 terms of a written agreement, regardless of whether the writing
4 is intended by the parties as a final, complete, and exclusive
5 statement of those terms. [§ 1856(g) and Law Revision
6 Commission Comment to § 1856.] Evidence offered to interpret or
7 explain the meaning of the terms of a written agreement is
8 subject to the normal rules of admissibility and construction of
9 instruments, including the rule that the "test of admissibility
10 of extrinsic evidence to explain the meaning of a written
11 instrument is not whether it appears to the court to be plain
12 and unambiguous on its face, but whether the offered evidence is
13 relevant to prove a meaning to which the language of the
14 instrument is reasonably susceptible." Law Revision Commission
15 Comment to § 1856, citing, Pacific Gas & Electric Co. v. G.W.
16 Thomas Drayage & Rigging Co. Inc., 69 Cal.2d 33, 37, 69
17 Cal.Rptr. 561, 564 (1968).

18 The applicability of the parol evidence rule under
19 California law involves a two-step inquiry. First, the court
20 must ask whether "[t]he writing [was] intended to be an
21 integration, i.e., a complete and final expression of the
22 parties' agreement, precluding any evidence of collateral
23 agreements." Banco do Brasil, S.A. v. Latian, Inc., 234
24 Cal.App.3d 973, 1001, 285 Cal.Rptr. 870, 886 (1991), cert.
25 denied, 112 S.Ct. 2967, quoting Gerdlund v. Electronic
26 Dispensers Int'l, 190 Cal.App.3d 263, 270, 235 Cal.Rptr. 279
27 (1987). If it was, the court must then decide whether "the
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1 agreement [is] susceptible of the meaning contended for by the
2 party offering the evidence." Id. If it is, then the parol
3 evidence is admissible.

4 The question of whether an agreement or agreements
5 constitute an integration of all of the parties' agreements, is
6 a question of "[w]hether the parties *intended* the written
7 instrument to serve as the exclusive embodiment of their
8 agreement," and is to be determined by consideration of all of
9 the circumstances. Id. (Emphasis in original.) The
10 appearance of an "integration clause" in the contract "may well
11 be conclusive on the issue of integration." Id.

12 If the agreement in question is found to be integrated, the
13 court must then determine if the agreement is susceptible of the
14 meaning contended by the party offering the evidence. The test
15 of admissibility of extrinsic evidence to explain the meaning of
16 a written agreement is not whether it appears to the court to be
17 plain and unambiguous on its face, but whether the offered
18 evidence is relevant to prove a meaning to which the language is
19 reasonably susceptible. Banco do Brasil, 234 Cal.App.3d 973,
20 1009, 285 Cal.Rptr. 870,891 (citation omitted). In other words,
21 extrinsic evidence is admissible to prove a meaning to which the
22 language of a contract is reasonably susceptible, even though on
23 its "four corners" the instrument appears to the court to be
24 clear and unambiguous. Brawthen v. H & R Block, Inc., 28
25 Cal.App.3d 131, 136, 104 Cal.Rptr. 486, 490 (1972). However,
26 this rule does no more than allow extrinsic evidence of the
27 parties' understanding and intended meaning of the words used in
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1 their written agreement. Id.

2 When presented with a parol evidence question, the court
3 must preliminarily consider all credible evidence offered to
4 prove the intention of the parties, including testimony as to
5 the circumstances surrounding the making of the agreement,
6 including the object, nature and subject matter of the writing,
7 so that the court can place itself in the same situation in
8 which the parties found themselves at the time of contracting.
9 Pacific Gas & Electric Co., at 69 Cal.2d 33, 39-40, 69 Cal.Rptr.
10 561, 565. If the court decides after considering this evidence,
11 that the language of the contract, in the light of all of the
12 circumstances, is fairly susceptible of either one of the two
13 interpretations contended for, extrinsic evidence relevant to
14 prove either of such meanings is admissible. Id. at 69 Cal.2d
15 33, 40, 69 Cal.Rptr. 561, 565-6.

16 When objection is made to any particular item of evidence
17 offered to prove the intention of the parties, the trial court
18 may not yet be in a position to determine whether in the light
19 of all of the offered evidence, the item objected to will turn
20 out to be admissible as tending to prove a meaning of which the
21 language of the instrument is reasonably susceptible or
22 inadmissible as tending to prove a meaning of which the language
23 is not reasonably susceptible. Id. at fn. 7. In such case, the
24 court may admit the evidence conditionally by either reserving
25 its ruling on the objection or by admitting the evidence subject
26 to a motion to strike. Id.

27 **III. DISCUSSION**

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1 Axel Johnson's notice of its motion indicated it objected
2 to the entirety of the declarations of Barry Flynn, Robert
3 Membreno, John Flegel and Archibald Mull, III, as well as
4 Exhibits "F" - "O" that are referenced in the declarations. At
5 the hearing, Roger Mead, counsel for Axel Johnson, clarified
6 that there are two branches to the motion:

7 The first part of the motion seeks to exclude parol
8 evidence offered by SAI to support its contention that
9 the 1992 Settlement Agreement and 1992 Amendment
10 Agreement extinguished or modified in some way Axel
11 Johnson's rights under the 1990 Purchase Agreement,²
12 and specifically Axel Johnson's rights under paragraph
13 6.9 of the 1990 agreement, whatever those rights may
14 be.

15 The second part of Axel Johnson's motion is to exclude
16 SAI's parol evidence as to what paragraph 6.9 of the
17 1990 Purchase Agreement means, that is, what is meant
18 by "determines not to proceed with development of a
19 project?"

20 Axel Johnson does not identify the specific line items of
21 each declaration and exhibit it contends violate the parol
22 evidence rule, nor does it provide an analysis of the legal
23 bases upon which the parol evidence rule is violated with
24 respect to each item of evidence it objects to.³ The court does
25 not believe that the entirety of the evidence offered is
26 excluded under the parol evidence rule because much of the
27 offered evidence is not contradictory in nature but instead is

28 ² The full title of the 1990 agreement is "Agreement Among SAI Energy, Inc. and Axel Johnson Energy Development, Inc. for the Sale and Purchase of Axel Johnson Soledad, Inc." The agreement is referred to as the "1990 Purchase Agreement" in this decision.

³

Axel Johnson did identify a limited number of specific paragraphs its objects to and the issue or argument to which the evidence relates (see, Motion at pp. 7-8, paragraphs 1-4). However, the remainder of Axel Johnson's objections to the declarations are submitted in string citation form, without analysis as to why the various items of evidence are inadmissible under the parol evidence rule (Motion at pp. 9-11, paragraphs 1-4). There is similarly no analysis with respect to a number of the exhibits it contends are inadmissible under the parol evidence rule.

1 offered to interpret or explain the meaning of terms of the
2 written agreement, or to explain the circumstances surrounding
3 execution of the documents. The court will therefore issue a
4 ruling as to the categories of evidence the court finds violate
5 or do not violate the parol evidence rule.

6 **A. Did the 1992 Settlement Agreement Extinguish Axel
7 Johnson's Rights Under the 1990 Purchase Agreement?**

8 SAI offers evidence that only Oeberst had an option to
9 acquire the PG&E Power Purchase Agreement ("PPA") back from SAI,
10 and that paragraphs 6 and 13 extinguished Axel Johnson's rights
11 under the 1990 Purchase Agreement.

12 In the event that SAI determined not to proceed with the
13 project set forth in the 1992 Settlement Agreement, paragraph 6
14 gave Oeberst the option to reacquire the PPA for no
15 consideration but required the consent of "other third parties."⁴
16 Paragraph 13 prevented SAI from assigning its interest in the
17 PPA without the consent of Archibald Mull III, and provided for
18 an order of distribution in the event SAI assigned or alienated
19 its interest in the power agreement, or in the event SAI
20 received proceeds from PG&E from a further amendment of the PPA.⁵

21 ⁴ Paragraph 6 provides:

22 In the event that SAISE determines not to proceed with the Project, SAISE agrees to immediately
23 notify Archibald Mull III [counsel for Oeberst] in writing thereof. If such notice is given, or if the Note
24 Due Date shall not have occurred by June 30, 1995, the Oeberst & Associates Holding Trust shall
25 have an option to acquire at no cost from SAISE the PG&E Power Agreement upon demanding
assignment thereof, subject to any consent from PG&E or other third parties that may be required for
the assignment thereof.

26 ⁵ Paragraph 13 provides in part:

27 (a) SAISE may not assign all or substantially all of its interest in the PG&E Power Agreement without
28 the consent of Archibald Mull III, which consent shall not be unreasonably withheld. In the event
that SAISE enters into any further amendment of the PG&E Power Agreement which has the effect of

1 The 1992 Settlement Agreement contains an integration
2 clause at paragraph 11, which provides that the agreement was
3 not intended to alter any of the agreements SAI and Axel Johnson
4 had between themselves.⁶ Since the agreement was integrated, the
5 next inquiry under the parol evidence rule is whether the
6 evidence offered by SAI is reasonably susceptible to its
7 interpretation that the 1992 Settlement Agreement extinguished
8 Axel Johnson's rights under the 1990 Purchase Agreement. The
9 court finds that it is not.

10 The language of paragraph 11 of the 1992 Settlement
11 Agreement clearly provides that the agreement does not alter any
12 agreements between SAI and Axel Johnson. This is consistent
13 with the circumstances surrounding the making of the agreement.
14 The 1992 Settlement Agreement was a settlement by SAI and Axel
15 Johnson as defendants in a lawsuit with Oeberst. It was not an
16 agreement between themselves. The fact that SAI and Axel
17 Johnson entered into the 1992 Amendment Agreement further
18 supports this fact. The preamble of the 1992 Amendment

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21 deferring the Article 12 deadline thereof as amended in the First Amendment, as a result of which
22 SAISE receives any cash payment from PG&E, such cash payment shall be treated as Net Proceeds
23 and shall be distributed in accordance with paragraph 13(b)(I) and (ii) hereof.

24 (b) In the event that, prior to the Note Due Date, SAISE assigns or otherwise alienates its interest in
25 the PG&E Power Agreement in such fashion as to substantially end SAISE's active involvement in
26 the Project, then the Net Proceeds thereof shall be treated as follows:

27 [distribution scheme omitted].

28 ⁶ Paragraph 11 provides:

While this Agreement is intended to be a complete and comprehensive settlement of all claims and
disputes as between Plaintiffs on the one hand and Defendants on the other hand, nothing herein is
intended to affect or alter in any way the status of agreements, claims, or disputes that any of Plaintiffs
may have among themselves, or that Defendants may have among themselves.

1 Agreement provides that it "is intended to be a side agreement
2 between the parties hereto with respect to their entry into and
3 performance of that certain [1992 Settlement Agreement]"

4 Further, the attorney who jointly represented Axel Johnson and
5 SAI with respect to the 1992 Settlement Agreement, Charles
6 Treat, had a conflict of interest which would have precluded his
7 representation of the individual interests of either Axel
8 Johnson or SAI.

9 Having considered all of the evidence offered, the court
10 does not find the 1992 Settlement Agreement reasonably
11 susceptible of SAI's interpretation that it extinguished Axel
12 Johnson's rights under the 1990 Purchase Agreement. The
13 evidence contradicts the clear language of paragraph 11 of the
14 1992 Settlement Agreement. Therefore, the evidence offered to
15 support that Axel Johnson's rights under paragraph 6.9 of the
16 1990 Purchase Agreement were extinguished by the 1992 Settlement
17 Agreement is barred by the parol evidence rule. [§ 1856(a).]
18 Accordingly, Axel Johnson's motion is granted as to this
19 category of evidence.

20 **B. Did the 1992 Settlement Agreement Grant Oeberst a Right**
21 **to Reacquire the PPA Superior to Any Right Axel Johnson**
May Have Had?

22 SAI offers evidence in support of an interpretation of the
23 1992 Settlement Agreement that Oeberst had a right to acquire
24 the PPA which was superior to any right of Axel Johnson. This
25 interpretation preserves Axel Johnson's rights under the 1990
26 Purchase Agreement, except those rights would be secondary to
27 the rights of Oeberst. The court finds that this is an
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1 interpretation to which the language is reasonably susceptible.

2 The 1992 Settlement Agreement contains an integration
3 clause as previously indicated, and it clearly expresses the
4 parties' intention that the agreements between SAI and Axel
5 Johnson were not altered. SAI seeks to introduce evidence to
6 support an interpretation that following execution of the 1992
7 Settlement Agreement, Oeberst had the superior right to obtain
8 the PPA in the event SAI did not proceed with the project
9 described in the agreement. In support of this interpretation,
10 SAI's evidence focuses upon paragraphs 6 and 13 of the 1992
11 Settlement Agreement.

12 SAI's interpretation of paragraph 6 of the 1992 Settlement
13 Agreement is that Axel Johnson was not a "third party" whose
14 consent was necessary in order for Oeberst to get the PPA. This
15 is a reasonable interpretation since Axel Johnson was a party to
16 the 1992 Settlement Agreement and was referred to throughout the
17 1992 Settlement Agreement as "AJED." If Oeberst's rights to
18 reacquire the PPA were subject to Axel Johnson's rights under
19 paragraph 6.9 of the 1990 Purchase Agreement, it is a reasonable
20 argument that paragraph 6 of the 1992 Settlement Agreement would
21 have identified Axel Johnson by name rather than as a "third
22 party." The argument that Axel Johnson was not a "third party"
23 is also a reasonable interpretation in the context of the
24 business transaction, because it seems unlikely that Oeberst
25 would allow Axel Johnson, a defendant in its lawsuit and a
26 company who was out of the alternative energy business, to have
27 superior rights to the PPA. The interpretation is further
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1 bolstered by paragraph 13, which prohibited assignment of the
2 PPA by SAI without the consent of Archibald Mull, III, but no
3 mention is made of Axel Johnson's consent as also being required
4 prior to assignment of the PPA.

5 While the court has found that the evidence offered by SAI
6 that the 1992 Settlement Agreement extinguished Axel Johnson's
7 rights under the 1990 Purchase Agreement contradicts paragraph
8 11 of the Settlement Agreement, the court finds that the
9 evidence offered by SAI in support of Oeberst having the
10 superior rights to the PPA is an interpretation to which the
11 Settlement Agreement is reasonably susceptible. For these
12 reasons, the court will allow SAI to introduce evidence that
13 Oeberst had the superior rights to the PPA as of 1992.

14 **C. Did the 1992 Amendment Agreement Extinguish Axel**
15 **Johnson's Rights under Paragraph 6.9 of the 1990 Stock**
16 **Purchase Agreement?**

17 The preamble to the 1992 Amendment Agreement provides:

18 This Amendment Agreement amends and
19 supersedes Article 5 of that certain [1990
20 Stock Purchase Agreement]. . .

21 This Amendment Agreement is intended to be a
22 side agreement between the parties hereto
23 with respect to their entry into and
24 performance of that certain "Settlement
25 Agreement, Release and Waiver" being
26 negotiated among these parties, on one part,
27 and the Bankruptcy Trustee of the estate of
28 Carl H. Oeberst and Associates Holding Trust,
on the other part.

Recital A of the Amendment Agreement incorporates the
recitals of the 1992 Settlement Agreement.

Recital B of the Agreement provides:

The Soledad Purchase Agreement contained
certain provisions, chiefly in Article 5
thereof, concerning the division of responsi-

1 bility as between AJED and SAISE as to any
2 payments . . . made or required to be made to
3 the Oeberst Group. AJED and SAISE, as part
4 of the negotiations toward the Settlement
5 Agree-ment and as an inducement to each of
6 them to enter into the Settlement Agreement,
7 now desire to amend and supersede said
8 provisions of Article 5 with the provisions
9 of this Amendment Agreement.

6 Paragraph 1 provides:

7 Article 5 of the Soledad Purchase Agreement
8 is hereby deleted in its entirety

9 Paragraph 2 provides:

10 This Amendment Agreement is . . . entirely
11 contingent and conditional upon the signature
12 of the Settlement Agreement

13 Paragraph 3 provides:

14 Promptly upon execution of this Amendment
15 Agreement and of the Settlement Agreement,
16 SAISE shall execute and deliver . . . a Note
17 . . . in the amount of . . . \$200,000. . . .

18 Paragraph 6 provides:

19 In the event that SAISE assigns all or a part
20 of its interest in the PG&E Power Agreement:
21 (i) SAISE shall assure that the assignee(s)
22 agree to assume the obligations of SAISE
23 here-under; provided, however, that any
24 purported assignment of the obligations of
25 SAISE hereunder to any person or party to
26 which SAISE does not also assign the PG&E
27 Power Agreement shall be null and void and of
28 no effect; and (ii) SAISE shall apply all Net
Proceeds remaining after payments, as defined
in and as required by paragraph 13(b) of the
Settlement Agreement, in payment of the Note
payable to AJED.

Paragraph 8 provides:

This Amendment Agreement is binding on AJED,
SAI, and SAISE

Paragraph 9 provides:

[T]he parties declare and represent that no
promises, inducements, agreements or releases

1 not expressly contained herein have been
2 made, and that this Agreement contains the
3 entire agreement between the parties, and
4 that the terms of this Amendment Agreement
5 are contractual and not recitals only.⁷

6 SAI seeks to introduce evidence that the 1992 Amendment
7 Agreement ended any residual rights of Axel Johnson, other than
8 payment on the \$200,000 Note. The evidence particularly
9 focuses on paragraph 6 of the 1992 Amendment Agreement as having
10 been intended to modify paragraph 6.9 of the 1990 Purchase
11 Agreement, leaving Axel Johnson with no remaining rights to
12 reacquire the PPA.

13 Having reviewed the offered evidence, it is unclear at this
14 juncture what the parties intended was to happen to Axel
15 Johnson's rights under paragraph 6.9 of the 1990 Purchase
16 Agreement, which is a critical issue in the case. Until such
17 time as the parties' intent on this issue is ascertained, the
18 court is not in a position to rule that SAI's evidence in
19 support of its interpretation of the 1992 Amendment Agreement is
20 admissible as tending to prove a meaning to which the language
21 of the instrument is reasonably susceptible, or inadmissible as
22 tending to prove a meaning of which the language is not
23 reasonably susceptible. For this reason, the court will
24 conditionally admit the evidence offered by SAI that the 1992
25 Amendment Agreement modified and/or extinguished Axel Johnson's
26 rights under the 1990 Purchase Agreement, subject to Axel
27 Johnson's right to bring a motion to strike at a later date.

28 ⁷ The remaining provisions of the 1992 Amendment Agreement are primarily boiler plate, as opposed to deal points.

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2 D. With Respect to the 1990 Purchase Agreement, What was
3 the Meaning in Paragraph 6.9 of the Phrase "determines
4 not to proceed with development of a project with
5 respect to the PPA?"

6 SAI offers evidence that the sale of the PPA to PG&E did
7 not constitute a determination "not to proceed with development
8 of a project with respect to the PPA," and the parties did not
9 intend the interpretation suggested by Axel Johnson. SAI's
10 interpretation is that "determines not to proceed" meant failure
11 to utilize the PPA to generate income to pay Oeberst's claim,
12 which was Axel Johnson's concern at the time of the 1990
13 Purchase Agreement; and "development of a project" was intended
14 to be interpreted with flexibility because the parties knew at
15 that time that the PPA could be used for a geothermal project
16 rather than a biomass project.

17 The 1990 Purchase Agreement contains an integration clause
18 at paragraph 9.2. The court must therefore determine if the
19 agreement is reasonably susceptible of the meaning contended by
20 the party offering the evidence. After considering all of the
21 evidence, the court finds that the language of paragraph 6.9 is
22 reasonably susceptible of the interpretation offered by SAI.

23 The parties did not define the terms contained in paragraph
24 6.9. At the time the agreement was entered into, presumably
25 everyone was happy and the only issue was the potential Oeberst
26 claim. Axel Johnson had just received \$2,205,000 from PG&E and
27 it was receiving another \$50,000 from SAI pursuant to the 1990
28 Purchase Agreement. Axel Johnson was also apparently getting
out of the alternative energy business.

1 Pursuant to the 1990 Purchase Agreement, SAI took on part
2 of the potential liability to Oeberst, however Axel Johnson was
3 still contractually bound to Oeberst for any liability under its
4 agreement with Oeberst. While it is unclear if the potential
5 Oeberst liability was a problem for Axel Johnson, the court
6 finds that paragraph 6.9 is reasonably susceptible of the
7 interpretation offered by SAI that the provision "determines not
8 to proceed" meant failure to use the PPA in some manner, so
9 that, in the event SAI did not use the PPA, Axel Johnson could
10 use the PPA to satisfy whatever liability it had to Oeberst.
11 The evidence offered also supports that "development of a
12 project" is reasonably susceptible to more than one
13 interpretation, since the parties did not define the term. The
14 evidence offered by SAI to support its interpretation of the
15 meaning of paragraph 6.9 of the 1990 Purchase Agreement will
16 therefore be admitted.

17 **IV. CONCLUSION**

18 The foregoing shall constitute the court's ruling on Axel
19 Johnson's motion to exclude SAI's parol evidence. The ruling is
20 without prejudice to Axel Johnson's right to raise evidentiary
21 objections to the offered evidence.

22 The court will restore to its calendar the remaining
23 matters which were taken under submission at the hearing on
24 December 5, 1996.⁸ The court hereby sets a telephonic status

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26 ⁸Excluding the parol evidence motion and debtor's opposition thereto, the remaining matters on the court's December
27 5th calendar were:

- 28 (a) Pre-trial conference re debtor's objection to Axel Johnson's claim;
(b) Debtor's Third Motion to Compel, and opposition thereto by Axel Johnson;

1 conference on the objection to claim for April 10, 1997 at 9:00
2 a.m. The restored matters will trail the status conference on
3 the April 10th calendar. The parties shall meet and confer
4 prior to the status conference so that they can inform the court
5 how they wish to proceed with the remaining motions which are
6 pending.

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8 DATED: _____ JAMES R. GRUBE
9 UNITED STATES BANKRUPTCY JUDGE

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25 _____
26 (c) Debtor's Motion for Summary Judgment on Axel Johnson's claim, and opposition thereto by Axel Johnson;
27 (d) Axel Johnson's Motion for Summary Judgment on Debtor's liability, and opposition thereto by the debtor;
28 (e) Debtor's Motion to Strike Portion of Axel Johnson's Memorandum in Support of its Motion for Summary
Judgment; and
(f) Motion to Exclude Declaration of Paul Graf in Support of Axel Johnson's Cross-Motion for Summary Judgment.