

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

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:  
[Debtor's Name],  
Debtor(s).

Case No. [Case No]  
Chapter [Chapter]

[Plaintiff's Name],  
Plaintiff(s),  
vs.  
[Defendant's Name],  
Defendant(s).

Adversary No. [Adversary No]

**ORDER FOR PRE-TRIAL  
PREPARATION AND FOR TRIAL  
SETTING CONFERENCE AND  
REQUIREMENTS FOR PRE-TRIAL  
ORDER**

Good cause appearing, IT IS HEREBY ORDERED that:

1. **Rule 26(a) Initial Disclosures:** All initial disclosures required pursuant to FED. R. Civ. P. 26(a) shall have been made by **[Initial disclosures]**.
2. **Discovery Completion:** All discovery shall have been completed by **[Discovery completion]**.
3. **Pre-Trial Motions:** All pre-trial motions must be filed in accordance with B.L.R. 7007-1 and heard on or before **[Pre-trial Motions]**.
4. **Trial Setting Conference:** A trial setting conference will be held on **[Trial setting conference date]** at **[Trial setting conference time]**. It shall be attended by counsel who will try

1 the matter. All counsel shall be fully prepared to discuss all aspects of the trial. The trial setting  
2 conference will not be continued without leave of the court.

3 5. **Joint Pre-Trial Order:** All counsel shall meet and confer not less than twenty days  
4 prior to the trial setting conference for the purpose of preparing the pre-trial order. Not less than ten  
5 days prior to the trial setting conference a JOINT PRE-TRIAL ORDER shall be filed and served.  
6 THE CAPTION SHALL CONTAIN THE DATE AND TIME OF THE TRIAL SETTING  
7 CONFERENCE.

8 a. Contents of Pre-Trial Order: The order shall include the following statements in the  
9 following order:

- 10 i. "The following facts are admitted and require no proof:" (Set forth a concise  
11 statement of each.);
- 12 ii. "The following issues of fact, and no others, remain to be litigated:" (Set  
13 forth a concise statement of each.);
- 14 iii. "The following issues of law, and no others, remain to be litigated:" (Set forth  
15 a concise statement of each.);
- 16 iv. "Attached is a list of exhibits intended to be offered at trial by each party,  
17 other than exhibits to be used for impeachment only. The parties have exchanged  
18 copies of all exhibits." (Attach an exhibit for each party in the form attached. As to  
19 each exhibit state whether there is an objection to its admissibility in evidence and the  
20 nature of such objection.) If deposition testimony is to be offered as part of the  
21 evidence, the offering party shall follow the procedure contained in the attached  
22 Courtroom Protocol;
- 23 v. "The parties have exchanged a list of witnesses to be called at trial." The  
24 parties shall exchange a list of names and addresses of witnesses, including expert  
25 witnesses, to be called at trial other than those contemplated to be used for  
26 impeachment or rebuttal. The lists of witnesses shall be attached to the proposed  
27 Joint Pre-Trial Order and shall describe concisely the subject of their proposed  
28 testimony. If expert witnesses are to be called at trial, the parties shall exchange

1 short narrative statements of the qualifications of the expert and the testimony  
2 expected to be elicited at trial. If reports of experts to be called at trial have been  
3 prepared, they shall be exchanged but shall not substitute for the narrative statement  
4 required;

5 vi. "Other matters that might affect the trial:" (Set forth additional matters such as  
6 anticipated motions in limine, special scheduling of witnesses, objections to proposed  
7 testimony, etc.);

8 vii. "All discovery desired to be conducted has been completed.";

9 viii. "The parties are ready for trial.";

10 ix. "The estimated length of trial is \_\_\_\_\_."

11 x. "All parties (do) (do not) agree and consent to the entry of final judgment by  
12 the Bankruptcy Court:" In the event all parties do not agree and consent the position  
13 of each non-consenting party shall be set forth;

14 xi. "The foregoing admissions have been made by the parties, and the parties  
15 have specified the foregoing issues of fact and law remaining to be litigated.

16 Therefore, this order shall supersede the pleadings and govern the course of trial of  
17 this cause, unless modified to prevent manifest injustice."

18 b. Plaintiff's Duty. It shall be the duty of plaintiff to prepare and sign a proposed joint  
19 pre-trial order and to serve it in such manner so that it will actually be received by the office  
20 of counsel for all other parties not later than fifteen days prior to the trial setting conference.  
21 The order as proposed by plaintiff shall be complete in all respects except for other parties'  
22 lists of exhibits and witnesses.

23 c. Duty Of Parties Other Than Plaintiff. Within three court days following other parties'  
24 receipt of plaintiff's proposed order, it shall be the duty of each other party:

25 i. Agreement With Form Of Proposed Order. If plaintiff's proposed order is  
26 satisfactory, to attach that party's list of exhibits and witnesses to the order, to  
27 indicate approval of the proposed order by signature, to file it with the clerk in time to  
28 be received ten days prior to the trial setting conference, and to serve all other parties

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

with a completed copy of the order so filed; or

ii. Disagreement With Form Of Proposed Order. If plaintiff's proposed order is unsatisfactory:

(1) Immediately to meet and confer with plaintiff in a good faith effort to achieve a joint proposed order; and

(2) If such effort is unsuccessful, to prepare a separate proposed order and file it, together with plaintiff's order and a declaration of that party setting forth the efforts made to comply with subparagraph (a) immediately above.

These shall be filed and served in such a manner that they will actually be received by the Clerk and the plaintiff ten days prior to the trial setting conference.

d. Non-Receipt Of Proposed Joint Pre-Trial Order. If parties other than plaintiff have not received plaintiff's proposed pre-trial order by fifteen days before the trial setting conference, it shall be the duty of each such other party to prepare, file and serve a unilateral proposed pre-trial order at least five days before the trial setting conference.

6. **Trial Date**: Trial setting will be on [Trial date ] at [Trial time] or as soon thereafter as the court may designate. All counsel are advised that they must be prepared to go to trial the two week period commencing [Trial date ] on a trailing basis.

7. **Judgment**: Final judgment shall be entered by the Bankruptcy Court unless within sixty days after the initial status conference the court rules that this is a non-core proceeding and final judgment should be entered by the District Court.

8. **Sanctions**: If a joint proposed Pre-Trial Order has not been filed within the time set forth above, the court may do any of the following:

a. Continue the trial date, if no prejudice is involved to the party who is not at fault;

b. Award monetary sanctions including attorneys' fees against the party at fault, payable to the party not at fault. Said sanctions shall be assessed against the party at fault and/or counsel, in the court's discretion;

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

c. Award non-monetary sanctions against the party at fault. These may include the entry of a judgment of dismissal or the entry of an order striking the answer and entering a default.

9. **Failure To Appear At Hearing Or Prepare For Trial:** Failure of counsel for any party to appear before the court at the trial setting conference or to complete the necessary preparations therefor or to appear at or to be prepared for trial may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or as to the entire proceeding.

10. **Bankruptcy Dispute Resolution Program (BDRP):** The Bankruptcy Dispute Resolution Program (BDRP) offers a means to resolve disputes quickly, at less cost and often without the stress and pressure of litigation. Methods include mediation, negotiation, early neutral evaluation and settlement facilitation. Parties wishing assignment to the BDRP or to a judicially supervised Settlement Conference should contact Millie McGowan at (408) 535-5004. The BDRP procedures are explained in B.L.R. 9040 *et seq.* A list of available resolution advocates and their resumes are available at the Clerk's Office.

\*\*\* END OF ORDER \*\*\*

1 Adversary No. [Adversary No]

2

3

4

**COURT SERVICE LIST**

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## COURTROOM PROCEDURES

**Trial Exhibits.** The following provisions govern all exhibits except those used for purposes of impeachment.

(a) All copies of exhibits shall be pre-marked. Plaintiff's exhibits shall be identified numerically commencing with "Exhibit No.1". Defendant's exhibits shall be marked alphabetically commencing with "Exhibit No. A" through "Z", "AA" through "AZ", "BA" through "BZ", etc.

(b) If a party has ten (10) exhibits or less, the exhibits shall be marked with the party's number or letter in the lower right hand corner in ink. If a party has in excess of ten (10) exhibits, then the party's exhibits shall be assembled in three ring binders. No binder may exceed three inches in thickness. The exhibits shall be divided by tabs extending beyond the page on the right hand side and the tab shall bear the number or letter of the exhibit.

(c) If a party has in excess of 25 exhibits, the party shall contact the Courtroom Deputy and obtain exhibit markers which shall be completed prior to submission of the party's exhibits. Exhibit markers are to be affixed to the lower right hand corner of the exhibit provided, if the marker would cover any information on the exhibit, then the marker is to be affixed to the reverse side of the exhibit.

(d) Each party shall prepare an Exhibit List in the attached form. All items shall be completed with the exception of the date boxes pertaining to identification and admittance which are to be left blank.

(e) The parties shall exchange exhibits, together with a copy of the Exhibit List, seven days prior to trial.

(f) Not later than noon the day preceding the commencement of trial each party shall deliver to the Courtroom Deputy the original and one copy of the party's exhibits, together with the original and one copy of the party's Exhibit List.

(g) There shall be sufficient copies of exhibits for all counsel participating in the trial.

(h) The Court expects the parties to stipulate into evidence all exhibits to which there is no objection.

(i) The Courtroom Deputy will maintain all exhibits whether marked for identification or admitted in evidence. When counsel wants a witness to examine an exhibit, counsel should ask the Courtroom Deputy to provide the particular exhibit to the witness.

**Trial Briefs.** Each party shall serve and file a trial brief seven days prior to trial which shall briefly state the party's contentions, the relevant facts expected to be proved at trial, and the law on the issues material to the decision.

**Findings of Fact and Conclusions of Law.** Each party shall serve and lodge with the Court seven days prior to trial proposed findings of fact and conclusions of law on all material issues.

**Demonstrative Evidence.** The use of sketches, models, diagrams, pictures, summaries, charts, and other demonstrative evidence is encouraged. Summaries may be required by the Court in actions on account, preferences, or other issues involving voluminous documentation of financial transactions.

The courtrooms are equipped with blackboards and a projection screen is available for use either

during presentation of the case or during argument. However, before electronic equipment can be brought into the Courtroom, prior permission of the Court is required so that the U.S. Marshall's Office can arrange for clearance through the first floor security station.

**Electronic Recording Equipment.** The proceedings are recorded by electronic recording equipment. Counsel are reminded that only one person may speak at a time to avoid overlapping tracks on the tape. The system is quite sensitive but it is helpful if counsel remains in the general vicinity of one of the four microphones located on the counsel tables, the podium, and the witness stand.

There is a counter located on the top of the podium which indexes the recording tape and corresponds to the notes taken by the system operator. By noting the counter reading it is possible to order a portion of a transcript rather than an entire transcript. The system is also capable of repeating a question directed to a witness such as where an objection has been interposed.

**Counsel Tables.** Plaintiff or moving party should utilize the counsel table in the front of, and closest to, the witness stand. The defendant or responding party should utilize the counsel table furthest from the witness stand.

**Witnesses.** Any request to exclude witnesses from the courtroom prior to testimony should be made before opening statements. Witnesses may be called out of order to accommodate subpoenaed witnesses or experts.

A witness may not bring notes, documents, or other papers to the witness stand without permission of the Court. A witness may not be shown such writings during his or her testimony without permission of the Court unless the writings have been marked for identification or admitted in evidence.

**Examination of Witnesses.** Counsel may examine witnesses from the podium, from counsel table, either seated or standing, or may move generally about the courtroom keeping in mind the electronic recording system. Counsel may approach a witness without obtaining prior permission of the Court.

**Objections and Argument.** Counsel should stand when making evidentiary objections. Closing argument may be made from the podium or counsel may move about the courtroom keeping in mind the electronic recording system.

**Recesses.** Generally there will be a mid-morning and a mid-afternoon recess. In lengthy matters, there will be a ten minute recess after the parties have rested and before commencement of closing argument.

**Attorney Conference Rooms.** Conference rooms are available for use between 8:00 a.m. and 4:30 p.m. As the conference rooms are normally locked for security reasons, please check with the Courtroom Deputy to insure availability. If a conference room is locked upon your arrival at the Courthouse, use the telephone in the Clerk's Office to contact the Courtroom Deputy. Counsel's trial materials may be left in the courtroom during the noon recess provided counsel notifies the Courtroom Deputy at the conclusion of the session so the courtroom may be properly secured.

