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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re)	Case No. [Case No.] MEH
[Debtor])	Chapter [Chapter No.]
)	
)	
Debtor(s).)	
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)	Adv. No. [Adv. No.]
[Plaintiff])	
)	
Plaintiff.)	
v.)	
[Defendant])	Date: xx/xx/xxxx
)	Time: x:xx x.x.
Defendants.)	Ctrm: 3020 (San Jose)
)	

PRETRIAL CONFERENCE ORDER AND TRIAL SCHEDULING ORDER

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

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

1 Fact Discovery Cut-off: [Trial -45-60]
2 Last day to hear Discovery Motion(s): [Trial -45-60]
3 Expert Witness Disclosures by: [Expert Discovery -14]
4 Expert Witness Discovery Cut-off: [Trial -30]
5 Last day to hear Summary Judgment
6 Motion(s): [Trial -30]
7 Parties' Pre-Trial Meet and Confer by: [PTC Statement -7]
8 Exchange Exhibits and Witness List by: [PTC Statement -7]
9 File Joint Pre-Trial Conference
10 Statement by: [PTC -7]
11 Pre-Trial Conference: [Trial -7]
12 Lodge Exhibits and Witness Lists
13 with Court: [Trial -7]
14 File and Serve Trial Brief: [Trial -7]
15 Trial Date: [Date and Time]

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

19
20 **1. DISCOVERY**

21 Counsel shall comply with the deadlines established above.¹ Notwithstanding Civil
22 Local Rule (C.L.R.) 37-3, as incorporated by Bankruptcy Local Rule (B.L.R.) 1001-2, all
23 discovery motions must be heard by the close of discovery. Counsel should carefully review
24 C.L.R. 37-1, which requires a meaningful “meet and confer” before asking for court

25
26 ¹ **Error! Main Document Only.** The deadlines set forth above supersede the
27 deadlines set forth in Fed. R. Civ. P. 26, as incorporated by Fed. R. Bankr. P. 7026.

1 assistance. Counsel should be familiar with the filing and timing requirements for motions
2 under B.L.R. 7007-1.

3 All depositions shall be concluded by the discovery cut-off date. All discovery
4 requiring a written response shall be served in time for the response to be due prior to the
5 discovery cut-off date.

6 Any motions to extend the discovery cut-off date must be heard on or before the cut-
7 off date. Motions to compel discovery may be heard after the cut-off date, but must be filed
8 and served within ten days after the cut-off date.

9
10 **2. MOTIONS FOR SUMMARY JUDGMENT**

11 Counsel should be familiar with the filing and timing requirements for motions under
12 B.L.R. 7007-1. No separate statement of undisputed facts is required under the Federal Rules
13 or Bankruptcy Local Rules.

14
15 **3. PARTIES' PRE-TRIAL MEET AND CONFER**

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

- 20 A. The following facts are admitted and require no proof
21 B. The following issues of fact, and no others, remain to be litigated
22 C. The following issues of law, and no others, remain to be litigated
23 D. The appropriate measure of damages is
24 E. The parties have exchanged lists of witnesses to be called at trial
25 F. The parties have exchanged all other non-testimonial evidence to be used at
26 trial, including documents, expert reports, physical evidence

1 G. The parties have stipulated to the admission of the following documents for all
2 purposes

3 H. The parties have objections to the following documents (including the general
4 nature of the objection)

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

8 If the parties do not agree on a joint response to any of the above, they should set forth
9 each side's position clearly and concisely.

10 Counsel need not disclose evidence that will be presented as impeachment of any
11 witness. Counsel should be clear that impeachment is a fairly narrow category of evidence.

12
13 **4. JOINT PRE-TRIAL CONFERENCE STATEMENT**

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

- 16 A. Responses to all matters addressed in Paragraph 1, above;
17 B. Each party's List of Exhibits to be Offered at Trial; and
18 C. Each party's List of Witnesses to be Offered at Trial.

19 Witnesses and exhibits omitted on these lists will be excluded.

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

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1 **5. THE COURT'S EXPECTATIONS REGARDING PARTIES' PRE-TRIAL**
2 **MEET AND CONFER AND PRE-TRIAL CONFERENCE STATEMENT**

3 Proper preparation for trial, including appropriate participation in the pre-trial process,
4 makes for better trials and better results. Counsel must participate meaningfully in the Parties'
5 Pre-Trial Meet and Confer.

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

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

14
15 **6. PRE-TRIAL CONFERENCE**

16 A Pre-Trial Conference will be held at the date and time indicated above in Courtroom
17 3020, 280 South First Street, San Jose, CA.

18 Trial counsel shall appear in person.

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

22
23 **7. TRIAL EXHIBITS**

24 By the date set forth above, counsel for each party shall submit two copies of all
25 exhibits identified in the Exhibit List (See § 4) to the court. The parties shall bring sufficient
26 copies of exhibits for all counsel, the witness, and the court.

1 Each copy of each exhibit shall be pre-marked by the proponent prior to trial.
2 Plaintiff's exhibits shall be numbered with an identifying initial, and defendant's exhibits shall
3 be lettered. The parties may stipulate to use joint exhibits and to the manner in which they
4 will be designated. Exhibit stickers may be obtained from the courtroom deputy.

5 If any party expects to offer more than ten exhibits, such party must place them in a
6 three-ring binder with a tab for each exhibit.

7 At the commencement of trial, the parties shall be prepared to stipulate into evidence
8 all exhibits that are admissible for at least one purpose and as to which there is no dispute as
9 to authenticity or the ability of the opposing party to lay a foundation.

10
11 **8. TRIAL BRIEFS**

12 By the date set forth above, each party must, (1) serve and file a trial brief (providing
13 chambers copies if the trial brief exceeds 10 pages), which brief shall include (a) a discussion
14 of the elements of each cause of action, including citation to controlling authority, and (b) a
15 discussion of the legal basis and calculation for each type of damage requested in the
16 complaint. Trial briefs shall not exceed fifteen (15) pages without prior permission of the
17 court.

18
19 **9. TRIAL DATE**

20 Trial will commence at the date and time noted above, at Courtroom 3020, 280 South
21 First Street, San Jose, CA.

22 Seven calendar days before the trial date counsel shall inform the courtroom deputy
23 (Millie McGowan at 408-278-7578) whether the parties have settled.

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1 **10. WITNESSES**

2 Unavailability

3 Counsel must take appropriate steps to ensure witnesses are available for trial. If
4 necessary, witnesses must be subpoenaed. Unrepresented parties must obtain subpoenas in
5 advance from the Clerk's Office and ensure they are served on witnesses in a timely way.

6 Form of Testimony

7 Any party may, as to any witness, present the direct examination testimony of such
8 witness by filing and serving a declaration under penalty of perjury signed by the witness, if
9 (a) such declaration is filed and served at least three (3) business days prior to the trial, and (b)
10 the witness is present in court for cross-examination on the day of trial. This paragraph does
11 not preclude either party from calling any witness for direct examination by means of live
12 testimony.

13
14 **11. FAILURE TO COMPLY WITH OBLIGATIONS UNDER THIS PRE-TRIAL
15 CONFERENCE ORDER**

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

17 Continuances

18 Counsel should be aware that the court will not grant continuances of trial dates absent
19 compelling circumstances beyond the parties' or counsel's control. The unavailability of
20 parties, counsel, experts, or other necessary individuals will not constitute cause to continue a
21 trial. Stipulations to continue a trial do not bind the court.

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

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COURT SERVICE LIST