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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	Case No.
,	Chapter
Debtor(s).	
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,	A.P. No.
Plaintiff(s),	
v.	
,	
Defendant(s).	

**TRIAL SCHEDULING ORDER**  
Fed. R. Bankr. P. 7016

On (Date), 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.**

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

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Table of Pre-Trial and Trial Deadlines	
Fact Discovery Cut Off	
Expert Witness(es) Disclosure Date	
Expert Witness(es) Discovery Cut Off	
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 Filing Date	[7 days before pre-trial conference]
Pre-Trial Conference Date & Time	[set by court]
Lodge Exhibits with Court	[generally 7 days before trial]
Lodge Witness List with Court	same as above
File and Serve Trial Brief	same as above
Trial Date & Time	[set by court]
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.<sup>1</sup> Counsel should be familiar with the filing and timing requirements for motions under B.L.R. 7007-1.

**2. MOTIONS FOR SUMMARY JUDGMENT**

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

**3. PARTIES’ PRE-TRIAL MEET AND CONFER**

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

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

- 5 A. The following facts are admitted and require no proof  
6 B. The following issues of fact, and no others, remain to be litigated  
7 C. The following issues of law, and no others, remain to be litigated  
8 D. The appropriate measure of damages is  
9 E. The parties have exchanged lists of witnesses to be called at trial  
10 F. The parties have exchanged all other non-testimonial evidence to be used at trial  
11 including: documents, expert reports, physical evidence  
12 G. The parties have stipulated to the admission of the following documents for all  
13 purposes  
14 H. The parties have objections to the following documents (including the general nature  
15 of the objection)  
16 I. Other matters that might affect the trial: (Set forth additional matters such as  
17 anticipated motions in limine, special scheduling of witnesses, objections to proposed  
18 testimony, etc.

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

21 Counsel need not disclose evidence that will be presented as impeachment of any witness.  
22 Counsel should be clear that impeachment is a fairly narrow category of evidence.<sup>2</sup>

#### 23 **4. JOINT PRE-TRIAL CONFERENCE STATEMENT**

24 Counsel shall file a Joint Pre-Trial Conference Statement by the deadline set forth above.  
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26 <sup>2</sup> The proper function of rebuttal evidence is to contradict, impeach or defuse the impact of the  
27 evidence offered by an adverse party. Testimony offered only as additional support to an argument  
28 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 The statement shall include the following elements:

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

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

6 The operative pleadings (complaint and answer) will be deemed superceded by the parties'  
7 Pre-Trial Conference Statement.

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

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

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

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

21 **6. PRETRIAL CONFERENCE**

22 A Pretrial Conference will be held at the date and time indicated above at the United States  
23 Bankruptcy Court, 280 South First Street, Courtroom 3099, San Jose, CA 95113.

24 Trial counsel shall attend in person.

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

28 **7. TRIAL EXHIBITS**

1 a. Procedure

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

9 b. Introduction

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

12 **8. TRIAL BRIEFS**

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

- 15 A. A discussion of the elements of each cause of action, including citation to controlling  
16 authority (9<sup>th</sup> Circuit); and  
17 B. A discussion of the legal basis and calculation for each type of damage requested in  
18 the complaint.

19 Extended factual discussions are not necessary.

20 **9. TRIAL DATE**

21 Trial will commence at the date and time noted above, at the United States Bankruptcy  
22 Court, 280 South First Street, Courtroom 3099, San Jose, CA 95113.

23 Seven calendar days before the trial date counsel shall inform the courtroom deputy (Tanya  
24 Bracegirdle (408) 278-7556) whether the parties have settled. The court will not vacate trial date  
25 unless settlement is reduced to writing and signed by the parties prior to trial.

26 **10. WITNESSES**

27 Unavailability

28 Counsel must take appropriate steps to ensure witnesses are available for trial. If necessary,

1 witnesses must be subpoenaed. Unrepresented parties must obtain subpoenas in advance from the  
2 clerk of the court and ensure they are served on witnesses in a timely way.

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

6 Form of Testimony

7 \_\_\_\_\_ Direct witness testimony in the form of a declaration under penalty of perjury will be  
8 submitted at the same time as the trial brief. Witnesses must be present in court at  
9 trial for examination; or

10 \_\_\_\_\_ Testimony will be presented live for all witnesses.

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

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

13 Continuances:

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

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

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

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

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

27 IT IS SO ORDERED.

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

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Court Service List