

1 attempt to resolve all discovery disputes on an expedited basis
2 in accordance with the court's practices and procedures, which
3 are available on the court's website, after the parties have
4 met, conferred, and made a good faith effort to resolve the
5 dispute.

6 **The Fact Discovery Deadline may be extended by the parties**
7 **by agreement, without an order of the court.**

8 **EVIDENCE.** On motions for relief from stay, testimonial
9 evidence at the Trial must be presented by written
10 declaration(s) or deposition excerpt(s), unless the Court by
11 order allows oral testimony. B.L.R. 4001-1(e). Any motion for
12 permission to introduce any oral testimony (including by cross-
13 examination of the other party's declarant(s) or deponent(s))
14 must be filed and served no later than **14 calendar days** before
15 the Date and Time of Trial and shall include the names of the
16 witnesses, the subject of their expected testimony, and, where
17 applicable, a statement of the reasons why the testimony cannot
18 properly be introduced by declaration(s) or deposition
19 excerpt(s). Any opposition must be filed and served no later
20 than **10 calendar days** before the Date and Time of Trial. The
21 Court will rule on the motion without a hearing. No such
22 motion is required for cross-examination or redirect
23 examination of expert witnesses.

24 Except on motions for relief from stay, declarations of
25 non-expert witnesses will not be considered except by
26 stipulation of the parties.

27 **PRE-TRIAL SUBMISSIONS.** Not later than **7 calendar days**
28 before the Date and Time of Trial, each party shall:

1 (a) File and serve a trial brief, which must include a
2 summary of the facts to be proven and the legal theories on
3 which the party relies. Briefs must not exceed **15 pages**
4 without prior permission of the Court. The Court will not
5 normally request or permit post-trial briefs.

6 (b) Except for motions for relief from stay, file and
7 serve a witness list, including a brief summary of the
8 anticipated testimony from each witness. If a party to the
9 matter will be called as a witness (even as an adverse witness)
10 that party's name must be included on the witness list. The
11 presence of a witness' name on the witness list is to alert the
12 Court and the other side that the witness may be called. It
13 does not mean that that person will be called. Accordingly,
14 each party is responsible for ensuring the attendance of every
15 witness the party intends to call, whether or not named by the
16 other side. Except in exceptional circumstances, and absent
17 consent by the other side, a party will not be allowed to call
18 a witness not named on that party's witness list. This
19 subparagraph shall not apply to expert witnesses or their
20 testimony.

21 (c) On motions for relief from stay, file and serve (i) a
22 notice identifying any declaration(s), deposition excerpt(s) or
23 memoranda previously filed in connection with the preliminary
24 hearing; and (ii) any additional declarations the party wishes
25 the Court to consider.

26 (d) File and serve a list of exhibits (other than those
27 to be used for impeachment or rebuttal) and exchange, but not
28 file, copies of all exhibits the party intends to introduce

1 into evidence. Any paper(s) in the Court's file of which a
2 party intends the Court to take judicial notice, or other facts
3 that are proper for judicial notice under Fed. R. Evid. 201,
4 must be reproduced and included as an exhibit(s). Copies of
5 the declarations filed and served in accordance with this order
6 must be marked as exhibits in the manner described herein. All
7 exhibits are to be premarked for identification.

8 In adversary proceedings, Plaintiff's exhibits should be
9 marked by number and Defendant's exhibits should be marked by
10 letter. On motions for relief from stay and other contested
11 matters initiated by motion, Moving Party's exhibits should be
12 marked by number and Respondent's, Debtor's or Trustee's
13 exhibits should be marked by letter. On objections to claim(s)
14 and objections to confirmation of plans, Creditor's exhibits
15 should be marked by number and Debtor's or Trustee's exhibits
16 should be marked by letter.

17 Each page of any exhibit that has more than one page is to
18 be numbered consecutively. The parties must bring to Trial
19 copies of all exhibits for opposing counsel, the witnesses and
20 the Court, together with an exhibit list. If a party has more
21 than **10 exhibits**, the exhibits must be placed in a three-ring
22 binder with a tab for each exhibit and the exhibit list placed
23 at the front of the binder.

24 **EXPERT DISCOVERY AND EVIDENCE.** The presentation of expert
25 testimony at Trial shall be governed by the following:

26 (a) Direct evidence must be presented by a declaration
27 that authenticates the report of the expert. See FRCP
28 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each

1 party must file and serve declarations of experts and other
2 documentary evidence related thereto no later than **90 calendar**
3 **days** prior to trial; provided, however, on motions for relief
4 from stay, such declarations must be filed and served no later
5 than **14 calendar days** prior to the Date and Time of Trial. A
6 party that intends to offer an expert solely to contradict or
7 rebut evidence on the same subject matter identified by another
8 party must file and serve the disclosures required by Rule
9 26(a)(2) within **30 days** after the other party's disclosure.
10 FRCP 26(a)(2)(D)(ii).

11 (b) To cross-examine an opposing party's expert
12 declarant, a party must notify the opposing party in writing or
13 by e-mail at least **3 court days** before the Date and Time of
14 Trial, in which case the declarant will be required to attend
15 the Trial. Any party who fails to notify the opposing party
16 will not be permitted to cross-examine the opposing party's
17 expert. Any party who requests the right to cross-examine an
18 expert and then does not do so will be expected to reimburse
19 the opposing party no less than the expenses incurred in
20 producing the expert at the Trial.

21 (c) The parties must conclude all expert discovery by the
22 Expert Discovery Deadline set forth below.

23 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
24 mentioned in **PRE-TRIAL SUBMISSIONS** above, each party must
25 advise the opposing party of any objections to the introduction
26 of testimony or exhibits. Parties must meet and confer before
27 Trial to attempt to reach agreement regarding admissibility.
28 The Court expects the parties to make good faith efforts to

1 resolve all evidentiary issues.

2 **MOTIONS IN LIMINE.** If efforts to resolve disputes
3 regarding the introduction of testimony or exhibits are
4 unsuccessful, motions in limine should be filed and served no
5 later than **4 court days** before the Date and Time of Trial.
6 Such motions should include a certification that the moving
7 party has complied in good faith with the meet and confer
8 requirements of the preceding paragraph. Opposition should be
9 filed and served no later than **1 court day** before the Date and
10 Time of Trial. Motions in limine will be heard at the
11 commencement of Trial.

12 **STIPULATIONS.** At the commencement of Trial, the parties
13 must be prepared to stipulate into evidence all exhibits that
14 are admissible for at least one purpose. Bona fide objections
15 may be reserved, with the issue of admissibility deferred until
16 the exhibit is offered into evidence.

17 **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed
18 by the parties or ordered by the Court, Plaintiffs in adversary
19 proceedings, moving parties on motions for relief from stay,
20 and claimants on objections to claims will present their cases-
21 in-chief first. On objections to confirmation of plans,
22 debtors or other plan proponents will present their cases-in-
23 chief first.

24 **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of
25 advance identification of witnesses and production of exhibits
26 does not apply to witnesses and exhibits presented for purposes

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1 of impeachment or rebuttal.¹

2 **NOTICE TO COURT.** No later than the Monday of the week
3 prior to the Date and Time of Trial, counsel for: Plaintiff
4 (in an adversary proceeding); Moving Party (on a motion for
5 relief from stay); and the Debtor or Trustee (on objections to
6 claim or objection to plan confirmation) **must** telephone or e-
7 mail the Court's Courtroom Deputy, Mr. Benjamin Gapuz (415-268-
8 2362; Benjamin_Gapuz@canb.uscourts.gov), and report: whether
9 the parties intend to go forward with the Trial as scheduled;
10 if settlement is likely; whether the time reserved for the
11 Trial is realistic; and any other relevant information.

12 **NON-COMPLIANCE.** Any failure of a party to comply timely
13 with this scheduling order may result in judgment against such
14 party, removal of the Trial from calendar, exclusion of
15 evidence or imposition of monetary or non-monetary sanctions.
16 See FRCP 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

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18 **DATE AND TIME OF TRIAL:**

19 **TIME RESERVED FOR TRIAL:**

20 **FACT DISCOVERY DEADLINE:**

21 **DISPOSITIVE MOTION DEADLINE: 60 DAYS AFTER FACT DISCOVERY**

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25 ¹ The proper function of rebuttal evidence is to contradict,
26 impeach or defuse the impact of the evidence offered by an
27 adverse party. Testimony offered only as additional support to
28 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).

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DEADLINE

EXPERT DISCLOSURES: 90 DAYS PRIOR TO TRIAL
REBUTTAL EXPERT DISCLOSURES: 60 DAYS PRIOR TO TRIAL
EXPERT DISCOVERY DEADLINE: 30 DAYS PRIOR TO TRIAL
FINAL PRE-TRIAL CONFERENCE:
OTHER PROVISIONS:

END OF ORDER

Court Service List

[None]