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

In re:)	Case No. HLB
,)	Chapter 13
Debtor.)	
,)	Adv. Proc. No. HLB
v.)	
,)	
Plaintiff,)	
,)	
Defendant.)	

SCHEDULING ORDER

This proceeding came before the court on [REDACTED], 202[REDACTED] for a scheduling conference. Appearances were as noted on the record. Upon due consideration, and pursuant to FRCP¹ 16(b) (1)/FRBP 7016(a), the court **ORDERS** as follows:

I. Pro Se or Unrepresented Parties

Parties who are not represented by a lawyer are bound by the terms of this order to the same extent as represented parties and

¹ All citations to "FRCP" shall refer to one of the Federal Rules of Civil Procedure. All citations to "FRBP" shall refer to one of the Federal Rules of Bankruptcy Procedure. All citations to "FRE" shall refer to one of the Federal Rules of Evidence.

1 their attorneys, and the court will treat them as "counsel" for
2 purposes of this order and the proceeding in which it is entered.

3 **II. Pre-Trial and Discovery Schedule**

4 The parties shall adhere to the following schedule:

- 5 • Fact Discovery Cut-Off:
- 6 • Initial Expert Disclosures:
- 7 • Rebuttal Expert Disclosures:
- 8 • Expert Discovery Cut-Off:
- 9 • Dispositive Motion Deadline:²
- 10 • Parties' Pre-Trial Conference:
- 11 • Deadline to Exchange Witness List and Exhibits: 14
12 calendar days before date of Parties' Pre-Trial Conference
- 13 • Deadline to File Joint PTC Statement: 7 calendar days
14 before Court Pre-Trial Conference
- 15 • Court Pre-Trial Conference:
- 16 • Deadline to File Witness and Exhibit Lists: 14 calendar
17 days before Trial
- 18 • Deadline to File Trial Brief: 14 calendar days before trial
- 19 • Deadline to File Expert Witness Declarations: 14
20 calendar days before trial
- 21 • Deadline to Lodge Exhibits with Court: 14 calendar days
22 prior to trial
- 23 • Deadline to File Motions *in Limine*: 7 calendar days
24 before trial

25 _____
26 ² The Dispositive Motion Deadline is that by which dispositive motions must be
27 *filed*, not the date by which such motions must be heard. Dispositive motions
28 must be noticed for hearing in accordance with B.L.R. 7001-1 and Paragraph F
of Judge Blumenstiel's Practices & Procedures:
[https://www.canb.uscourts.gov/procedure/blumenstiel/judge-blumenstiels-
practices-and-procedures](https://www.canb.uscourts.gov/procedure/blumenstiel/judge-blumenstiels-practices-and-procedures)

- 1 • Deadline to Respond to Motions *in Limine*: 4 calendar days
- 2 before trial
- 3 • Date and Time of Trial:
- 4 • Time Reserved for Trial:³
- 5 • Other Deadlines:
 - 6 o Deadline to Complete Form of Alternative Dispute
 - 7 Resolution:
 - 8 o Deadline to Exchange Material Described in FRCP
 - 9 26(a) (1) (A) /FRBP 7026:

10 **III. Discovery**

11 Counsel shall comply with the deadlines set forth above.⁴

12 Notwithstanding Civil L.R. 37-1, as applied by B.L.R. 1001-2, all

13 discovery disputes must be submitted for adjudication no later

14 than the applicable Fact or Expert Discovery Cut-Off. Unless

15 otherwise ordered, the court will attempt to resolve all

16 discovery disputes on an expedited basis consistent with

17 Paragraph D of Judge Blumenstiel's Practices & Procedures.⁵

18 **A. Fact Discovery**

19 The parties must complete all fact discovery by the Fact

20 Discovery Cut-Off set forth above. Completion means that

21 depositions must be concluded, although not necessarily

22 transcribed. As to written fact discovery, responses and any

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25 ³ The court times most trials and will strictly enforce compliance with this allocation of time.

26 ⁴ These deadlines supersede those set forth in FRCP 26/FRBP 7026.

27 ⁵ [https://www.canb.uscourts.gov/procedure/blumenstiel/judge-blumenstiels-](https://www.canb.uscourts.gov/procedure/blumenstiel/judge-blumenstiels-practices-and-procedures)

28 [practices-and-procedures](https://www.canb.uscourts.gov/procedure/blumenstiel/judge-blumenstiels-practices-and-procedures)

1 production of discovery material must be due on or before the
2 Fact Discovery Cut-Off.

3 **B. Expert Discovery**

4 Unless otherwise ordered, the parties must conclude all
5 expert discovery on or before the Expert Discovery Cut-Off set
6 forth in Section II, above.

7 **IV. Motions for Summary Judgment**

8 The court expects counsel to be familiar with and to abide
9 by B.L.R. 7007-1. Neither the FRBP nor the B.L.R. require a
10 separate statement of undisputed facts in support of a motion
11 governed by FRCP 56/FRBP 7056.

12 **V. Parties' Pre-Trial Conference**

13 No later than the date of the Parties' Pre-Trial Conference
14 set forth in Section II of this order, counsel shall meet and
15 confer in good faith by telephone or video conference to discuss
16 the trial. Following the conclusion of the Parties' Pre-Trial
17 Conference, the parties shall prepare a Joint Pre-Trial
18 Conference Statement, which must be filed by the deadline set
19 forth in Section II hereof.

20 The Joint Pre-Trial Conference Statement must include
21 *concise and specific* statements pertaining to *each* of the
22 following subjects:

- 23 • The following facts are admitted and require no proof:
- 24 • The following issues of fact, and no others, remain to be
25 litigated:
- 26 • The following issues of law, and no others, remain to be
27 litigated:
- 28 • The appropriate measure of damages is:

- 1 • The parties have exchanged lists of witnesses to be called
- 2 at trial:
- 3 • The parties have exchanged all non-rebuttal exhibits to be
- 4 used at trial:
- 5 • The parties have exchanged expert witness reports:
- 6 • The parties have stipulated to the admissibility of the
- 7 following exhibits:⁶
- 8 • The parties object to the admissibility of the following
- 9 exhibits (please include a *concise* statement of the basis
- 10 for each objection):
- 11 • Other matters that might affect trial:⁷

12 If the parties cannot - despite their good faith efforts - agree
13 on a joint response to any of the above, they shall set forth
14 their respective positions *clearly and concisely*. The court
15 expects the parties to engage in the Parties' Pre-Trial
16 Conference in good faith and to cooperate in good faith in
17 drafting the Joint Pre-Trial Conference Statement. The court
18 will not hesitate to impose sanctions on any party or counsel who
19 fails to meet and confer in good faith or fails to cooperate in
20 good faith in the preparation of the Joint Pre-Trial Conference
21 Statement.

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24 ⁶ A stipulation to the admissibility of an exhibit does not relieve the party
25 introducing such exhibit from the obligation to demonstrate the relevance and
probative value of such exhibit during trial.

26 ⁷ Other matters that might affect trial might include, for example, brief
27 descriptions of anticipated motions *in limine*, special scheduling of
witnesses, objections to proposed witnesses or testimony, the need for
28 interpreters, or the parties' preferences as to whether a given witness
testifies in the courtroom or remotely.

1 **VI. Pre-Trial Submissions**

2 At least 14 calendar days prior to trial, the parties shall:
3 **(A)** file a list of witnesses they intend to call at trial; **(B)**
4 file a list of exhibits they intend to introduce at trial; **(C)**
5 file a trial brief; **(D)** file any expert witness declarations; **and**
6 **(E)** lodge all exhibits (in accordance with Subsection D, below).

7 **A. Witness and Exhibit Lists**

8 Each party's witness and exhibit lists should be identical
9 to those exchanged on the Deadline to Exchange Witness List and
10 Exhibits set forth in Section II of this order. If a party to a
11 matter will be called as a witness (even as an adverse witness),
12 their name must appear on the relevant witness list. Any witness
13 or exhibit omitted from the lists exchanged by the parties and/or
14 filed with the court will be excluded.

15 Each witness list must include a *clear and concise* summary
16 of each witness' anticipated testimony. The presence of a
17 witness' name on a witness list alerts the court and other
18 parties that such witness *might* be called; it does not mean that
19 witness *will* be called.

20 Exhibit lists must include expert witness declarations, as
21 well as any documents that a party intends to include in a
22 request for judicial notice under FRE 201.

23 Witness and exhibit lists should not include witnesses or
24 exhibits to be used solely for the purposes of rebuttal. The
25 court expects counsel to be familiar with the proper purpose and
26 function of rebuttal evidence.⁸

27 _____
28 ⁸ "The proper function of rebuttal evidence is to contradict, impeach, or
defuse the impact of evidence offered by an adverse party. Testimony or

1 **B. Trial Briefs**

2 Each party must submit a trial brief by the deadline set
3 forth in Section II of this order. Trial briefs shall not exceed
4 15 pages, absent *prior* leave of court. Each trial brief must
5 include: **(1)** A discussion of each element of each cause of
6 action, including a citation to and analysis of controlling (9th
7 Circuit) authority; **and (2)** an analysis of the legal basis for
8 and calculation of each type of damage sought in the operative
9 complaint. Extended factual discussions are not necessary or
10 helpful.

11 **C. Expert Witness Declarations**

12 **(1)** Direct expert testimony shall be presented via a
13 declaration that authenticates the report of the expert.⁹ Each
14 party must file and serve any expert declarations with supporting
15 documentary evidence 14 calendar days before trial. Expert
16 witness declarations shall be included in the proponent's witness
17 list and shall be marked as an exhibit in accordance with Section
18 D, below.

19 **(2)** To cross-examine an opposing party's expert witness, a
20 party must notify the opposing party by email at least 3 court
21 days prior to the Date and Time of Trial. Any party who fails to
22 notify the opposing party will not be permitted to cross-examine
23 the opposing party's expert. Any party who gives notice of their
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25 documentary evidence offered only as additional support for previously
26 introduced evidence or prior argument is improper on rebuttal." Peals v.
27 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. App'x 476 (9th Cir. 2004).

28 ⁹ FRCP 26(a) (2) (B)/FRBP 7026.

1 intent to cross-examine an opposing party's expert witness and
2 then fails to do so will be expected to reimburse the opposing
3 party for the expenses incurred by the opposing party in
4 producing the expert witness at trial.

5 **D. Exhibits**

6 Each party must lodge 2 complete sets of their trial
7 exhibits (other than those to be used solely for rebuttal) on or
8 before the Deadline to Lodge Exhibits with Court set forth in
9 Section II of this order. Any documents that a party intends to
10 include in a request for judicial notice under FRE 201 must be
11 included in that party's exhibits. Expert witness declarations
12 must be included in the proponent's exhibits.

13 All exhibits must be pre-marked for identification.
14 Plaintiff or movant shall mark their exhibits using numbers;
15 Defendant(s) or respondent(s) shall mark their exhibits using
16 letters. An exhibit shall not include more than one document and
17 its attachments. Each page of any exhibit that consists of more
18 than one page shall be paginated or numbered separately.

19 If a party has more than 10 exhibits, they must place their
20 exhibits in one or more three-ring binder(s), separating each
21 exhibit with a tabbed divider bearing the exhibit's number or
22 letter. Each binder also shall include a copy of the proponent's
23 exhibit list.

24 Counsel shall bring to trial complete sets of bound exhibits
25 for opposing counsel and the witness stand. These sets of
26 exhibits must be identical to those lodged with the court,
27 including the manner in which they are bound, organized, and pre-
28 marked.

1 **VII. Court Pre-Trial Conference**

2 On the date of the Court Pre-Trial Conference set forth in
3 Section II of this order, the court will convene a pre-trial
4 conference to discuss the issues set forth in the Joint Pre-Trial
5 Conference Statement and other matters relevant to trial.

6 The Court Pre-Trial Conference will convene via Zoom. The
7 court's website offers information explaining how to arrange an
8 appearance at a video hearing. If you have questions about how
9 to participate in a video hearing or conference, you may contact
10 the court by calling 888-821-7606 or by using the Live Chat
11 feature on the court's website.

12 **VIII. Motions *in Limine***

13 Motions *in limine* shall be filed and served no later than
14 the Deadline to File Motions *in Limine* set forth in Section II of
15 this order. Responses to motions *in limine* must be filed and
16 served no later than the Deadline to Respond to Motions *in Limine*
17 set forth in Section II of this order. Each motion *in limine*
18 must include counsel's certification that they met and conferred
19 in good faith in an effort to resolve the relevant dispute. The
20 court will address motions *in limine* at or prior to the
21 commencement of trial.

22 **IX. Witnesses**

23 Each party is responsible for ensuring the attendance of
24 every witness that party intends to call, whether or not any
25 other party has included such witness in their witness list. If
26 necessary, witnesses must be subpoenaed. Unrepresented parties
27 must obtain witness subpoenas in advance from the Clerk of Court
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1 and ensure proper, timely service of such subpoenas prior to
2 trial.

3 Unless a witness is truly unavailable, the court will not
4 permit the use of prior deposition testimony or prior written
5 testimony (declarations). The court expects counsel to be
6 familiar with FRE 804(a), which explains what constitutes
7 "unavailable" for purposes of a witness' trial testimony.

8 If counsel intends to call a witness who speaks only or
9 primarily a language other than English, counsel is responsible
10 for providing an interpreter for trial, except when the adversary
11 proceeding is instituted by an agency or department of the United
12 States.¹⁰ Any interpreter must be a Federally-Certified Court
13 Interpreter, a Professionally-Qualified Interpreter, or a
14 Language-Skilled Interpreter, as define by the Clerk of the
15 United States District Court for the Northern District of
16 California.¹¹

17 **X. Notice to Court**

18 No later than 7 days prior to trial, counsel shall contact
19 Courtroom Deputy Dan Sondheim (dan_sondheim@canb.uscourts.gov or
20 (415) 268-2312) and advise whether they intend to proceed with
21 trial. Absent extraordinary cause, the court will not continue
22 or vacate trials unless the parties have executed a binding
23 settlement term sheet or agreement.

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27 ¹⁰ 28 U.S.C. § 1827.

28 ¹¹ <https://www.cand.uscourts.gov/interpreters>

1 **XI. Trial**

2 Unless otherwise ordered, all trials will take place at the
3 United States Bankruptcy Court for the Northern District of
4 California, Philip Burton Federal Building & United States
5 Courthouse, 450 Golden Gate Avenue, 16th Floor, Courtroom 19, San
6 Francisco, California, 94102.

7 While the court retains discretion to permit witnesses or
8 counsel to appear at trial via remote means, it cannot provide
9 remote *public* access to trials or evidentiary hearings.

10 The court times most trials, and will strictly enforce
11 compliance with this allocation of time. Counsel should
12 understand that one day of trial equates approximately to 6 hours
13 of time on the record; thus, a one-day trial means that Plaintiff
14 and Defendant each should expect 3 hours of time on the record.

15 **XII. Unexcused Failure to Comply with this Scheduling Order**

16 The court takes trial seriously and expects the same of all
17 parties and counsel. The court will not continue or vacate trial
18 dates absent extraordinary circumstances outside the parties' or
19 counsel's control. The purported unavailability of witnesses,
20 counsel, experts, or other necessary individuals does not
21 constitute cause for continuing a trial. Stipulations to
22 continue a trial do not bind the court unless approved by written
23 order.

24 Any unexcused failure to comply with this scheduling order
25 *will not* result in continuance of trial but *will* result in the
26 imposition of sanctions. Depending on fault and circumstances,
27 such sanctions might include entry of judgment against the non-
28 compliant party, dismissal of the proceeding, exclusion of

1 evidence, or the imposition of monetary or other sanctions, as
2 permitted by law.¹²

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4 ****END OF ORDER****
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¹² FRCP 16(f)(1)(C)/FRBP 7016.

Court Service List