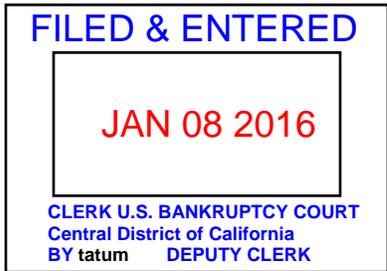


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ORDER NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
RUBY SIDDIQUI, M.D., an individual,
Debtor.
CHRISTINE KELLEY, an individual,
Plaintiff.
vs.
RUBY SIDDIQUI, M.D., an individual,
Defendant.

Case No. 2:14-bk-19653-RK
Chapter 7
Adv. No. 2:14-ap-01549-RK

**ORDER ON PLAINTIFF'S MOTION
TO STRIKE DEFENDANT'S
ANSWER AND ENTER DEFAULT
AGAINST DEFENDANT, OR IN THE
ALTERNATIVE, TO EXCLUDE
DEFENDANT'S UNDISCLOSED
EXHIBITS AND WITNESSES,
VACATING HEARING, DENYING
MOTION WITHOUT PREJUDICE,
VACATING TRIAL AND SETTING
FURTHER PRETRIAL
CONFERENCE**

DATE: January 12, 2016
TIME: 3:00 p.m.
PLACE: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

Pending before the court is Plaintiff Christine Kelley's motion to strike Defendant Ruby Siddiqui's answer and enter default against defendant, or in the alternative, to exclude defendant's undisclosed exhibits and witnesses. ECF 27. The motion was noticed for hearing on January 12, 2016 at 3:00 p.m. Michael Jay Berger, Law Offices of

1 Michael Jay Berger, represents Plaintiff. David Brian Lally, Law Office of David B. Lally,
2 represents Defendant.

3 The court has reviewed the moving, opposing and reply papers and rules on the
4 papers as follows. The court notes that its pretrial conference and scheduling order
5 entered on October 6, 2015 after the pretrial conference on September 29, 2015 set
6 certain deadlines, including a deadline of October 9, 2015 for the parties to submit an
7 amended pretrial order with stated objections to the exhibits, a deadline of December 2,
8 2015 to submit Plaintiff's trial declaration, a deadline of December 16, 2015 to submit
9 Defendant's trial declaration and a deadline of January 14, 2016 for the parties to submit
10 evidentiary objections to the trial declarations and optional trial briefs. ECF 24. The
11 pretrial conference and scheduling order also set a two day trial on January 21 and 22,
12 2016 at 9:00 a.m. *Id.*

13 The grounds for the instant motion to strike or exclude evidence are the late filing
14 of Defendant's trial declaration on January 4, 2016 and Defendant's alleged failures to
15 make discovery disclosures and cooperate in the preparation of the amended pretrial
16 order. Although the motion refers to an amended pretrial order, as does the court's
17 pretrial conference and scheduling order, the correct reference should be to an amended
18 pretrial stipulation under the current version of Local Bankruptcy Rule 7016-1(b).
19 According to Plaintiff in her motion, Defendant requested Plaintiff draft an amended
20 pretrial order on October 6, 2015, and Plaintiff emailed Defendant a draft amended
21 pretrial order on October 22, 2015, requesting Defendant's counsel to review, which was
22 ignored, though Defendant's counsel on October 27, 2015 advised Plaintiff's counsel that
23 he would look at the draft amended pretrial order on the following day, but Plaintiff's
24 counsel never heard back from Defendant's counsel. ECF 27. The parties had filed their
25 original joint pretrial stipulation on September 15, 2015. ECF 22. Defendant opposes the
26 motion, stating that the late filing of Defendant's trial declaration was not Defendant's
27 fault, but Defendant's counsel's fault due to excusable neglect based on overwork, and
28

1 Defendant disputes whether she failed to make discovery disclosures and cooperate in
2 the preparation of an amended pretrial order or stipulation. ECF 30 and 31.

3 In considering these circumstances, the court determines that both parties have
4 violated the court's pretrial conference and scheduling order by failing to submit an
5 amended joint pretrial order or stipulation by the deadline of October 9, 2016, which
6 failure still exists, and no excuse for such failure was given (i.e., admittedly no draft of an
7 amended joint pretrial order was prepared by either party until the one prepared by
8 plaintiff on October 22, 2015, almost two weeks after the deadline of October 9, 2016,
9 and no reason is stated why nothing was submitted to the court at any time about the
10 amended joint pretrial order issue until plaintiff filed this motion), and the court finds there
11 is no excuse. The court specifically ordered that the parties file an amended joint pretrial
12 order or stipulation in order for the court to review the evidentiary objections to the
13 exhibits in its preparations for trial, and this was not done. The court further determines
14 that pursuant to Local Bankruptcy Rule 7016-1(f), without a proper joint pretrial stipulation
15 and order approving such, the adversary proceeding is not ready for trial, and thus, the
16 court vacates the current trial dates on January 21 and 22, 2016 and sets a further
17 pretrial conference for February 9, 2016 at 2:00 p.m. to go over an amended joint pretrial
18 stipulation, which must be filed by February 2, 2016, and to reset the trial dates. If an
19 amended joint pretrial stipulation is not filed by February 2, 2016, the court intends to
20 impose sanctions on the culpable party or parties pursuant to Local Bankruptcy Rule
21 7016-1(f).

22 The court will deny Plaintiff's motion to strike or exclude evidence without
23 prejudice in part because of Plaintiff's "unclean hands" as a culpable party in failing to file
24 an amended joint pretrial order or stipulation without excuse and in part because
25 Plaintiff's evidentiary grievances may be addressed at the further pretrial conference or at
26 trial through a motion in limine.

27 ///

28

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

Accordingly, it is ORDERED as follows:

1. Plaintiff's motion to strike Defendant's answer or exclude evidence is DENIED WITHOUT PREJUDICE, and the hearing on the motion noticed for January 12, 2016 at 3:00 p.m. is VACATED.
2. The trial scheduled for January 21 and 22, 2016 at 9:00 a.m. and the deadline of January 14, 2016 to file evidentiary objections to trial declarations and optional trial briefs are VACATED and will be reset at the further pretrial conference scheduled herein.
3. A further pretrial conference is set for February 9, 2016 at 2:00 p.m.
4. The parties must file an amended joint pretrial stipulation by February 2, 2016.
5. Sanctions will be imposed against the culpable party or parties pursuant to Local Bankruptcy Rule 7016-1(f) if an amended joint pretrial stipulation is not filed by February 2, 2016 pursuant to Local Bankruptcy Rule 7016-1(b)-(e).

IT IS SO ORDERED.

###

Date: January 8, 2016



Robert Kwan
United States Bankruptcy Judge