

TRIAL PROCEDURES SUPPLEMENT TO LOCAL BANKRUPTCY RULES FOR THE HON. VICTORIA S. KAUFMAN

I. TRIAL BRIEFS

Pursuant to Local Bankruptcy Rule (“LBR”) 9013-2(a)(2), the Court will require the submission of trial briefs. Pursuant to LBR 9013-2(a)(1), trial briefs must be filed **no later than seven days before the trial date**. Trial briefs must contain the information set forth in LBR 9013-2(a)(1)(A) through (D). Unless specifically requested by the Court, no supplemental trial briefs may be filed and none will be considered.

II. PRETRIAL STIPULATION AND ORDER

Unless otherwise ordered by the Court, the parties must prepare a written joint pretrial stipulation pursuant to LBR 7016-1(b) through (f). The pretrial stipulation must contain the statements and information required by LBR 7016-1(b)(2).

Pursuant to LBR 7016-1(b)(1)(C) and (b)(2)(D), the parties must meet and confer no later than twenty-eight (28) days before the pretrial conference to attempt to stipulate to the authenticity and admissibility of the documents exchanged (without the necessity for live testimony). **The Court expects the parties to make good faith efforts to resolve all evidentiary issues.**

The Court will issue an order to set the trial date, approve a pretrial stipulation and provide for the procedures concerning the presentation of testimony as set forth in Sections III or IV below.

III. PRESENTATION OF LIVE TESTIMONY

Unless otherwise ordered by the Court (on its own initiative or at the request of a party), all evidence at trial shall be presented by way of live testimony. Live testimony may be presented in person or by ZoomGov videoconference. The Court will determine at the pretrial conference whether the trial will be conducted in person or by ZoomGov videoconference.

If the trial will be conducted by ZoomGov videoconference, the following rules apply:

A. Any attorney who plans to participate in the trial must appear using both audio and video (i.e., an attorney appearing by way of an audio-only connection will not be permitted to participate in the trial).

B. During the evidentiary hearing, each witness must appear using both audio and video and be situated in a quiet space. Each witness must participate using a computer that (i) has adequate Internet bandwidth to support the Zoom App, and (ii) has an attached or integrated camera, microphone and speaker. (Although a headset is not required, the Court has found that headsets typically provide the highest quality audio when using the Zoom App.)

IV. ALTERNATIVE PROCEDURE: DIRECT TESTIMONY BY DECLARATION

If the Court orders the presentation of direct evidence at trial by declaration, the following procedures will apply, unless otherwise modified by the Court:

A. Each party must present the direct testimony of its witnesses, including the testimony of expert witnesses, **with the exception of hostile witnesses**, through written declarations given under penalty of perjury (“Witness Declarations”). As with all testimony, Witness Declarations are subject to the Federal Rules of Evidence, including the rules on admissibility. See Fed. R. Evid. 611(a); *Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777, 779–80 (9th Cir. 1992) (per curiam). Each Witness Declaration must set forth the direct testimony that the witness would give as though questions were propounded in the usual fashion. Each statement of fact or opinion must be separately, sequentially numbered.

B. A Witness Declaration will be admissible at trial, subject to timely objections, only if the declarant is present at trial and subject to cross-examination, **unless cross-examination has been waived in writing, before trial, by the opposing party**.

C. Direct testimony of hostile witnesses, cross-examination, if requested, and appropriate impeachment evidence must be given by live testimony on the scheduled trial dates. The only oral testimony that may be offered at trial by a party through its own witnesses will be **strictly limited** to rebuttal testimony or such additional testimony on matters relevant to the outcome of the proceeding as may be specifically requested by the Court at the time of trial.

D. If a Witness Declaration refers to an exhibit to be admitted into evidence, the exhibit must be identified in the declaration by exhibit number or letter. As a foundational matter, the declarant must review each exhibit to which s/he testifies, but the exhibit itself need not be attached to the Witness Declaration. Unless the parties stipulate to the admission of an exhibit, the foundation for admission of an exhibit (other than for impeachment or rebuttal purposes) must be established in the Witness Declaration. Exhibits referenced in any Witness Declaration must be offered into evidence when the Witness Declaration is offered into evidence at trial.

E. If the presentation of direct evidence in the form of a deposition transcript is authorized under Fed. R. Civ. P. 32 and Fed. R. Evid. 804, the party offering such transcript must file a declaration authenticating the transcript and demonstrating that the requirements of these Rules have been satisfied. The party also must comply with the requirements of LBR 7030-1(b)(2), (b)(3) and (b)(4). However, notwithstanding LBR 7030-1(b), the marked copy required by LBR 7030-1(b) must be filed on the docket no later than the deadline for filing that witness’s direct testimony by declaration pursuant to Section V below.

V. EXHIBITS, DECLARATIONS AND EVIDENTIARY OBJECTIONS

Unless otherwise ordered by the Court:

A. Plaintiff must file all Witness Declarations (if applicable) and exhibits

(pursuant to the procedures set forth in Paragraph V.D below) comprising Plaintiff's case in chief **no later than twenty-eight days before the trial date**. Plaintiff concurrently must serve on Defendant all filed Witness Declarations and exhibits comprising Plaintiff's case in chief.

B. Defendant must file all Witness Declarations (if applicable) and exhibits (pursuant to the procedures set forth in Paragraph V.D below) comprising Defendant's case in chief, together with any written evidentiary objections to the admission of any of Plaintiff's exhibits or Witness Declarations, **no later than twenty-one days before the trial date**. Defendant concurrently must serve on Plaintiff all filed Witness Declarations and exhibits comprising Defendant's case in chief, and evidentiary objections to Plaintiff's exhibits or Witness Declarations.

C. Plaintiff must file any written evidentiary objections to the admission of any of Defendant's Witness Declarations and exhibits **no later than fourteen days before the trial date**. Plaintiff concurrently must serve on Defendant such written evidentiary objections.

D. All trial exhibits must be numbered and marked as required by LBR 9070-1(b)(2). Each party must file via CM/ECF a notice of lodgment of that party's trial exhibits and attach to that notice all of that party's exhibits in PDF format. If the attached PDF is a composite of multiple exhibits, the PDF must contain a bookmark for each exhibit (e.g., Exhibit 1, Exhibit 2, etc.). If each exhibit is attached as a separate PDF, the party must assign file names corresponding to the number or letter assigned to that exhibit.

E. At trial, the parties must be prepared to display relevant portions of the lodged exhibits **on the monitors located at the lectern, counsel tables, witness stand and bench**. Exhibits may be displayed by using either the screen sharing function in the Zoom App or the document camera located at the lectern. The purpose of this procedure is to streamline the introduction of trial exhibits and reduce trial time. **No later than fourteen days before the trial date**, the parties should contact 213-894-TECH (8324) to arrange a date and time to preview and test the courtroom technology equipment. Any previewing and testing of the courtroom technology equipment must be completed **no later than three Court days before the trial date**. See *Courtroom Technology*, at <https://www.cacb.uscourts.gov/courtroom-technology>.

F. No declarations other than those authorized under Section IV above, and timely filed pursuant to this Section V will be allowed. If the alternative procedures set forth in Section IV are applicable, the only additional evidence that a party may offer at trial is true rebuttal evidence. If the procedures in Section IV are applicable, and a party offers live testimony that the Court determines is more accurately characterized as direct testimony rather than rebuttal testimony, the testimony will be excluded or stricken.

VI. USE OF DISCOVERY DOCUMENTS

A. **Deposition Transcripts.** A party intending to offer direct evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32 and Fed. R. Evid. 804 must comply with Paragraph IV.E above.

B. **Other Discovery Documents.** Excerpts from interrogatories, requests for admissions, or other discovery documents to be offered at trial, other than those used for impeachment or rebuttal, must be filed pursuant to LBR 7026-2(c) not later than the applicable deadline for submission of declarations, exhibits and evidentiary objections set forth in Section V above.

VII. JUDGE'S COPIES AND TRIAL BINDER FOR COURTROOM

Judge's copies of all Witness Declarations, briefs and evidentiary objections which exceed 25 pages must be delivered to Judge Victoria S. Kaufman, in accordance with the Central Guide, Section 2-02 and Judge Victoria S. Kaufman's instructions. The Central Guide is located on the Court's website at: <https://www.cacb.uscourts.gov/the-central-guide>. Judge Victoria S. Kaufman's instructions regarding judge's copies are located on the Court's website at: https://www.cacb.uscourts.gov/sites/cacb/files/documents/judges/instructions/VK_Procedures-Judges-Copies.pdf.

In addition, **no later than seven days before the trial date**, each party must deliver to the chambers of Judge Victoria S. Kaufman **one copy of a notebook or 3-ring binder containing all of that party's trial exhibits**.

VIII. OTHER

A. **Subpoenas Required.** Any party that seeks to present the testimony of a hostile (i.e., uncooperative) third-party witness at trial is responsible for properly and timely serving on that witness a subpoena to appear at trial.

B. **Schedule. No later than three Court days before trial**, the parties must submit a schedule for the appearance of third-party witnesses, i.e., which third-party witnesses will provide testimony on each date of the trial, and whether a witness must be present in the morning and/or in the afternoon.

C. **Continuance of Trial Date.** Trials will be commenced promptly at the scheduled date and time. Trial dates will **not** be continued or vacated absent good cause, on a properly noticed motion, supported by competent and persuasive evidence. The parties will be contacted and informed whether the continuance has been granted or denied.

D. **Settlement. No later than five days before the trial date**, Plaintiff must telephone the Courtroom Deputy at (818) 587-2850 to report (1) whether the parties intend to go forward with trial as scheduled; (2) if settlement is imminent; (3) whether less time than is set forth in the order setting trial will be required (e.g., the parties will call fewer witnesses than anticipated); and (4) any other relevant information.

Stipulations for settlement must be in writing, executed by each party or its counsel, filed and delivered to chambers before the date of trial. If time constraints prevent reducing a settlement to writing prior to trial, all of the parties or their counsel must (1) advise chambers of the settlement and (2) appear at the time set for trial to recite the stipulation on the record.

E. **Opening Arguments.** Unless otherwise ordered by the Court, opening

arguments are not required. The Court will have read the trial briefs in advance.

F. **Closing Arguments.** Any closing arguments by the parties at the conclusion of trial cannot exceed **twenty minutes** per party.

G. **Judicial Notice.** The Court reserves its ability to take judicial notice of any pleadings on file with the Court and any prior rulings of the Court, whether or not a party requests that the Court take judicial notice of those pleadings or rulings.

IX. COMPLIANCE

Failure to comply with these procedures may result in the imposition of sanctions, including, but not limited to, monetary sanctions, removal from the trial calendar, dismissal for failure to prosecute, or the exclusion of evidence (e.g., witnesses who were not timely identified or exhibits that were not timely submitted).