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| **ORDER ESTABLISHING REMOTE TRIAL PROCEDURES – COVER SHEET**  The below sample Order Establishing Remote Trial Procedures has not been prepared by Judge Bason, and is not endorsed by him, but is being provided to parties as a sample of the type of order that might be appropriate in connection with evidentiary hearings/trials that are not conducted in person. |

united states BANKRUPTCY court

**central district of** **CALIFORNIA**

**[DIVISION NAME] DIVISION**

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| In re:  [DEBTOR NAME],  Debtor. |  | Case No.:  Adv. Proc. No.:  Chapter [\_\_] |
| [PLAINTIFF NAME],  Plaintiff,  v.  [PLAINTIFF NAME],  Defendant. |  | **ORDER ESTABLISHING REMOTE TRIAL PROCEDURES** |

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This adversary proceeding is scheduled for trial beginning on [Insert Date] (the "Trial"). In light of the current COVID-19 pandemic, the Chief Judge of the District Court has issued orders closing all courthouses in Central District of California, through and including June 1, 2020. *See* Order of the Chief Judge No. 20-42 (March 19, 2020) and General Order No. 20-05 (April 13, 2020). Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure ("Federal Rules"), made applicable here by Rule 9017 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), the current pandemic and closure of the Court's facilities provide "good cause in compelling circumstances" to conduct the Trial remotely, through the use of telephonic and videoconferencing technologies.

Further, the Court finds that the procedures adopted herein will provide "adequate safeguards" for purposes of Federal Rule 43(a) and ensure due process of law. These procedures will (i) enable the Court to identify, communicate with, and judge the demeanor of all witnesses in real time, (ii) enable counsel for the parties to see and hear the witness testimony, interpose objections, and communicate with the Court in real time, (iii) enable the parties, the witnesses and the Court to have simultaneous access to an identical set of pre-marked exhibits, (iv) avoid any undue influence or interference with the witnesses in connection with their testimony, and (v) preserve the ability of any witness to be represented by counsel during the proceeding, and to communicate with such counsel as the Court deems appropriate.

Accordingly, it is hereby **ORDERED**:

1. Audio and Video Conference Solutions. The Trial shall take place using the telephonic and videoconferencing solutions described herein. Participants in the Trial will be connected with the courtroom using these technologies but will not be physically present in the courtroom. The Court will utilize CourtCall for audio and [Skype for Business] for video.
   1. Audio. Participants must contact CourtCall to arrange their participation in the audio portion of the proceedings. Each party is responsible for arranging and paying the cost for its respective witnesses to participate in the Court Call audio feed. CourtCall may be reached at (888) 882-6878 or (866) 582-6878 and additional information is available at <https://courtcall.com>.
   2. Video. The Court staff will provide a link or URL (internet address) that enables participation in the video portion of the proceedings, to the list of persons identified by the parties in accordance with Paragraph 3 below. With the assistance of Court personnel, all counsel and witnesses shall participate in appropriate pre-Trial testing to determine that each participant's audio and video capabilities are functional.
2. Required Equipment. For purposes of participation in the Trial, each participating attorney and each witness must have simultaneous access to (1) a telephone for connecting to CourtCall for audio, (2) a computer, equipped with a camera, that is capable of receiving and transmitting video using the Court's video solution, (3) Internet browsing software that is adequate to facilitate the Court's videoconference solution, (4) an Internet connection with bandwidth adequate to support the individual's use of that video solution, and (5) Adobe Acrobat Reader for purposes of reviewing exhibits, as directed by counsel or the Court. The telephone must have a handset or headset and microphone attached, and if the telephone is a cellular phone, the attorney or witness using it must be situated in a location with cellular service adequate to provide clear audio. Further, absent compelling circumstances, the Court will not permit any counsel or witness to participate in the audio portion of the Trial by speakerphone. The Court's experience is that speakerphones do not provide adequate sound quality for purposes of producing a good audio recording of its proceedings.
3. Prior Notice of Trial Participants. No later than five business days prior to the Trial, the parties shall provide to the courtroom deputy [provide email address], and to each other, a list of all attorneys and witnesses who will participate in the Trial, together with an email address and telephone number for each. The telephone number provided should be a number at which the attorney or witness can be reached during the Trial in the event of an interruption in the audio or video feed. [This requirement is in addition to any requirements previously established by the Court for the parties to disclose to each other, by a date certain, the identity of the witnesses they intend to present at trial.]
4. Electronic Submission of Trial Exhibits.No later than five business days prior to the Trial, the parties shall provide to the courtroom deputy [provide email address], each other, and each witness, a .pdf (Adobe Acrobat) file of each exhibit the parties may use at Trial for any purposes, including for rebuttal or impeachment. The parties may distribute these electronic documents by way of a secure link to an FTP or other file sharing service, if necessary. The .pdf files shall be named sequentially. Plaintiff's exhibits shall be numbered as follows: P\_Ex\_1, P\_Ex\_2, P\_Ex\_3, etc. Defendants exhibits shall be lettered as follows: D\_Ex\_A, D\_Ex\_B, D\_Ex\_3, etc. Upon receipt of the electronic documents (or a download link), each attorney and witness shall take the steps necessary to ensure that all electronic documents can be successfully opened and are readily available during the Trial. [Subject to any order of the Court requiring that any exhibit be redacted or sealed, all exhibits will be filed on the docket by the Clerk of the Court, and shall become part of the trial record, following the Trial.]
5. Remote Witness Testimony. Having found "good cause in compelling circumstances" and "adequate safeguards," any witness called to testify at the Trial shall testify by contemporaneous transmission from a different location into the courtroom (each a "Remote Witness").
   1. All Remote Witnesses shall be placed under oath and their testimony shall have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn and testified in open court.
   2. Each Remote Witness shall provide their testimony from a quiet room and must situate themselves in such a manner as to be able to both view the video feed and be seen by the Court.
   3. While the Remote Witness is sworn and testifying: (i) no person may be present in the room from which the Remote Witness is testifying, (ii) the Remote Witness may not have in the room any documents except the exhibit submitted by the parties pursuant to Paragraph 4 above [and any declaration submitted in lieu of direct testimony], and (iii) may not communicate with any other person regarding the subject of their testimony, by electronic means or otherwise. If the witness or their counsel seek to communicate with one another, either shall openly request a recess for such purpose. If such request is granted by the Court, the witness and their counsel may privately confer "offline," i.e., by telephonic means that are not transmitted to the other parties.
6. Courtroom Formalities.Although conducted using telephonic and videoconferencing technologies, the Trial constitutes a court proceeding. No person shall record— from any location or by any means—the audio or video of the Trial. The audio recording created and maintained by the Court shall constitute the official record of the Trial. Further, the formalities of a courtroom shall be observed. Counsel and witnesses shall dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the Court and its proceedings.
7. Technical Pre-Trial Conference. On [Insert Date], the Court will hold a technical pre-trial conference for the purpose of testing both the telephonic and video conference technologies. All parties and witnesses must participate in the technical pre-trial conference. All participants are admonished not to discuss the substance of the Trial at the technical pre-trial conference, but instead limit their comments to the functionality of the technology and any procedural matters that relating to the technology.
8. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to this Order.

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