



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

Michael A Di Bacco

Debtor(s).

Michael Kline

Plaintiff(s),

v.

Michael A Di Bacco

Defendant(s).

CHAPTER 7

Case No.: 1:20-bk-11952-VK
Adv No: 1:21-ap-01010-GM

**ORDER DENYING PLAINTIFF'S MOTION IN
LIMINE [DKT. 126]; CONTINUING STATUS
CONFERENCE/PRETRIAL CONFERENCE**

Date: June 6, 2023
Time: 10:00 AM
Courtroom: 301

**PLEASE NOTE THAT SOME OF THE PROVISIONS IN THIS WRITTEN
ORDER VARY FROM THOSE STATED AT THE HEARING.**

The hearing was held with David Brian Lally appearing on behalf of the plaintiff/movant and Michael Di Bacco, defendant, in pro per. The Court had posted the

1 tentative ruling, which will be entered on the docket.

2 After oral argument further consideration by the Court, the following ruling is
3 hereby made:

4 (1) By June 13, 2023, Mr. Di Bacco will provide Mr. Lally with a list of the mailing
5 addresses, email addresses, and phone numbers of the witnesses whom he
6 intends to call. This may already have been provided in whole or part, but to
7 the extent that he has it or has access to it Mr. Di Bacco is again to send the
8 complete information. At the time of trial, he will be limited to those witnesses
9 whose information he is providing unless he is able to convince the Court that
10 he could not have obtained that information timely and through reasonable
11 efforts. If, after June 13, 2023 he becomes aware of the contact information
12 for a witness, he is to immediately provide that to Mr. Lally.

13 (2) Although Mr. Lally waived the right to take depositions of Defendant's
14 witnesses, he may do so under the Federal Rules of Civil Procedure (FRCP)
15 as incorporated in the Federal Rules of Bankruptcy Procedure (FRBP).

16 (3) Concerning the written discovery the Mr. Lally proposes (which would be
17 similar to sending the witnesses interrogatories), there is no provision in the
18 FRBP for such discovery on non-parties. Therefore, if Mr. Lally wishes to
19 gain written answers except through informal means, he must follow the
20 provisions of FRCP 31 [depositions by written questions, incorporated in
21 FRBP 7031]. Should he fail to serve the witness with a subpoena, there can
22 be no penalty for the witness' failure to appear. Notice of the deposition date
23 and a copy of the subpoena and questions must be served by mail or email
24 on Mr. Di Bacco, who will be able to propound additional questions in
25 conformance with FRCP 31.

26 (4) As to the production of documents from non-parties, Mr. Lally must comply
27 with FRCP 34 and FRCP 45 [incorporated as FRBP 7034 and FRBP 9016].
28 Although Mr. Di Bacco is willing to waive notice, he does not have the power

1 to subject his non-party witnesses to discovery. As to notice, due to his
2 waiver the Court rules that Mr. Di Bacco must be given notice of any
3 discovery under the FRBP, but need not be given notice of informal discovery
4 such as a phone conversation, etc.

5 (5) The status conference/pretrial conference is continued to July 18, 2023 at
6 10:00 a.m. by Zoom. By July 12, each party is to file a simple statement of
7 the status of his discovery and what issues need to be discussed at the July
8 18 hearing.

9 (6) Concerning the issue of any discovery that was due prior to Judge Kaufman's
10 order on the OSC, the Court hereby rules that no penalty shall be incurred
11 and that this is not longer an issue to be raised before the Court.

12 (7) The trial will include both the causes of action under §727 and §523.

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24 Date: June 6, 2023



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26 Geraldine Mund
27 United States Bankruptcy Judge
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