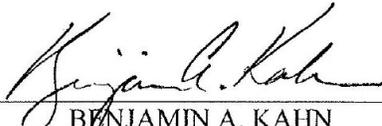


SO ORDERED.

SIGNED this 25th day of September, 2020.





BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

**AMENDED ORDER ESTABLISHING PROCEDURES FOR TELEPHONIC AND/OR
VIRTUAL HEARINGS BEFORE JUDGE KAHN AS A RESULT OF THE COVID-19
PANDEMIC**

Pursuant to Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017) and Federal Rule of Evidence 611, the current COVID-19 pandemic provides good cause and constitutes compelling circumstances for the admission of testimony and evidence on evidentiary hearings by video and audio means as set forth herein.

The Court will specially set dates on which evidentiary hearings before Judge Kahn shall be held ("Evidentiary Hearing Dates"), which dates shall be published on the Court's website: <https://www.ncmb.uscourts.gov>. Any matters set by the Court for those dates shall be governed by the procedures set forth in this Order. Each Evidentiary Hearing Date shall begin at 9:30 a.m. To

determine the time and order of the matters to be heard on each Evidentiary Hearing Date, the parties in interest shall contact the Courtroom Deputy, Karen Champagne, at **Karen_Champagne@ncmb.uscourts.gov**. A notice of the time and date of each matter set for an Evidentiary Hearing Date shall be issued by the Bankruptcy Noticing Center.

The Court determines that the following telephonic and virtual hearing procedures shall provide appropriate safeguards in relation to the matters specially set for evidentiary hearing on the following dates: September 16, October 1, October 22, November 19, and December 10. Any matters currently scheduled for evidentiary hearing or scheduled after the entry of this order shall be governed by this order. **IT IS HEREBY AGREED AND ORDERED** that:

1. **Audio and Video Conferencing Solutions**. All evidentiary hearings shall take place using the telephonic and videoconferencing solutions described herein. Participants will be connected with the courtroom using these technologies but will not be physically present in the courtroom. The Court will utilize the AT&T Teleconferencing Service ("AT&T") (for audio purposes) and Zoom for Government ("ZFG") (for video purposes).

a. **Audio**. AT&T can be accessed by calling (877) 848-7030, access code 8852513. All counsel and Remote Witnesses

accessing the hearing through AT&T shall utilize either a headset or handset.

b. **Video**. All participants using ZFG must use AT&T audio and disable the ZFG audio feature. The ZFG link shall be provided to those Parties who have submitted a notice of intent to participate via ZFG to the Court in accordance with Paragraph 4 below. All counsel and witnesses shall conduct a pre-hearing test of ZFG and, if possible, AT&T, using the same equipment that they will be using during the hearing.

2. **Speaker Phones Prohibited**. No speaker phone shall be used for audio. Parties shall use a handset or headset.

3. **Limit on Video Conferencing**. Due to video conferencing limitations, and in an effort not to overburden the ZFG platform, video conference participants shall be limited to the witnesses, those parties that anticipate questioning or cross-examining witnesses and, when possible, should be limited to one attorney per firm. Parties attending via ZFG shall utilize the ZFG link only during the matter for which they wish to be heard. Upon the conclusion of such matter, the party shall disconnect from the ZFG link and may continue participation in the hearing by dialing in through AT&T. Similarly, Remote Witnesses shall utilize the ZFG link only during their testimony. Prior to, and after completion of, a Remote Witness's testimony and all cross-examination, the Remote Witness shall disconnect from the ZFG link and may

participate in the hearing through AT&T. In order to limit the number of ZFG participants, if necessary, the Court may permit examination of a Remote Witness by telephone or take a recess between matters in order to add or subtract individuals participating via ZFG if necessary.

4. **Prior Notice of Intent to Use ZFG.** All parties wishing to attend the hearing via ZFG or wishing to offer Remote Witnesses shall provide notice to **Video_Court@ncmb.uscourts.gov** via electronic mail no later than **12:00 p.m. prevailing Eastern Time the day prior to the evidentiary hearing.** The notice shall identify each matter on which the Party intends to attend via ZFG. The Court will circulate the ZFG link to all such Parties prior to the hearing. Parties shall be responsible for circulating such information to any Remote Witness they intend to offer.

5. **Submission of Exhibits to Court.** Parties submitting exhibits shall file all exhibits and demonstratives on the docket in bookmarked .pdf format no later than **12:00 p.m. prevailing Eastern Time the day prior to the evidentiary hearing,** and shall contemporaneously serve the filed exhibits by electronic mail on counsel for each of the parties who has made an appearance on the relevant matter and the Bankruptcy Administrator. All exhibits shall be separately labeled. Filing of any exhibit shall not require the exhibit to be offered into evidence at the hearing, nor shall any proposed exhibit be considered as evidence unless

offered and admitted at the hearing. Notwithstanding the foregoing, any exhibit or demonstrative that will be used solely for rebuttal or impeachment may be separately password protected, which password shall be provided at the hearing in the event the offering party determines to use such exhibit.

6. **Remote Witness Testimony.** In accordance with Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017) and Federal Rule of Evidence Rule 611, for good cause and in compelling circumstances a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. The Court finds that the COVID-19 disease pandemic constitutes such exigent circumstances, and that the procedures set forth herein constitute adequate safeguards. Based on the foregoing, any witness called to testify or subject to cross-examination in relation to the matter shall be permitted to testify by contemporaneous transmission from a different location ("Remote Witness").

a. All Remote Witnesses shall be affirmed and their testimony shall have the same effect and be binding on the Remote Witness in the same manner as if such Remote Witness was affirmed and testified in open court.

b. Each Remote Witness shall provide his or her testimony from a quiet room and must situate himself or

herself in such a manner as to be able to both view the video feed and be seen by the Court.

c. While the Remote Witness is affirmed 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 exhibits submitted by the parties pursuant to Paragraph 5 above [and any declaration submitted in lieu of direct testimony], and (iii) may not communicate with any other person regarding the subject of the testimony, by electronic means or otherwise. If the Remote Witness or 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 Remote Witness and counsel may privately confer "offline," i.e., by telephonic means that are not transmitted to the other parties.

7. **Requirements for Allowance of Remote Testimony; Additional Information.** As additional safeguards for the allowance of a Remote Witness, the Party sponsoring said Remote Witness shall file with the Court, no later than **12:00 p.m. prevailing Eastern Time the day prior to the evidentiary hearing**, a document containing the following information:

- a. The name and title of each Remote Witness from whom the sponsoring Party may offer testimony.

- b. The matter on which the Remote Witness will provide testimony.
- c. The location of the Remote Witness (city, state, country).
- d. The place from which the Remote Witness will testify (e.g. home, office - **no addresses are required**).

Providing the identity of a Remote Witness shall not require that Remote Witness to be called, but only those Remote Witnesses timely identified herein will be permitted to testify absent good cause, unless called solely for rebuttal.

8. **Debtor Witness**. Any individual debtors or any individuals designated by order of the Court to perform all acts required to be performed by the debtor pursuant to an order entered by the Court, the Bankruptcy Code, Bankruptcy Rules, and Local Rules shall be referred to herein as a "Debtor Witness." Counsel for Debtor shall make available and be responsible as the Party sponsoring any Debtor Witness as a Remote Witness under Paragraphs 7 above and 10 below, and shall coordinate with counsel and the Bankruptcy Administrator to make the Debtor Witness available for remote testimony. Any counsel expecting to call a Debtor Witness as a Remote Witness shall file with the Court the information required by Paragraph 7.b. above, and counsel for Debtor need not identify any matter for which Debtor Witness may be called by another party.

9. **Affirming Remote Witnesses.** All Remote Witnesses shall be affirmed over ZFG or other video conferencing solution, as applicable, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was affirmed by the Courtroom Deputy in person in open court.

10. **Responsibility for Remote Witnesses.** The Party sponsoring any witness other than a Debtor Witness shall be responsible for ensuring that the AT&T dial-in, ZFG link, and all exhibits are supplied to the Remote Witness prior to the hearing and that the Remote Witness has access to AT&T and ZFG, as applicable. **The Party sponsoring a Remote Witness other than a Debtor Witness shall ensure that the witness has printed copies of all exhibits filed with the Court by all counsel prior to the start of the hearing. In lieu of printed copies, a witness may have electronic copies that will be readily accessible and reviewable by the witness during testimony on a device separate from the device used to connect to the hearing. Counsel for Debtor(s) shall undertake the requirements of this paragraph with respect to any Debtor Witness.**

11. **Courtroom Formalities.** Although conducted using telephonic and videoconferencing technologies, the evidentiary hearing constitutes a court proceeding. No person shall record— from any location or by any means—the audio or video of the

hearing. The audio recording created and maintained by the Court shall constitute the official record of the hearing. Further, the formalities of a courtroom shall be observed. Counsel and Remote Witnesses shall dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the Court and its proceedings.

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